

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	19CR386(PKC)
Plaintiff,	:	
-against-	:	United States Courthouse
MUSTAFA GOKLU,	:	Brooklyn, New York
Defendant.	:	Thursday, October 6, 2022
	:	9:00 a.m.
	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR PRETRIAL CONFERENCE  
BEFORE THE HONORABLE PAMELA K. CHEN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: United States ATTORNEY'S OFFICE  
Eastern District of New York  
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*Proceedings recorded by mechanical stenography, transcript  
produced by Computer-Aided Transcription*

Proceedings

347

1 (In open court.)

2 (The Hon. PAMELA K. CHEN, presiding.)

3 (Defendant present.)

4 THE COURT: So I understand we have an issue.

5 MR. NAVARRO: We do have an issue, but Ms. Kassner  
6 just ran to the restroom. Judge, when she is back, the  
7 intention is to have the charge conference this evening after  
8 the jury leaves.

9 THE COURT: Correct. Because I'm guessing that  
10 we're going to be done with the Government's presentation of  
11 evidence today, right.

12 MR. NAVARRO: We expect to be resting at the end of  
13 the day, but it's possible it spills over but our best guess  
14 is today.

15 THE COURT: And obviously there's the unknown  
16 question about whether the defendant intends to testify, but  
17 we'll address that at the end of the day as well, but it seems  
18 best to me to have our charge conference this evening. And,  
19 thankfully, our court reporter, our stellar court reporter, is  
20 willing to stay on.

21 So now that Ms. Kassner has returned, tell me what  
22 the issue is.

23 MS. KASSNER: Yes, Your Honor, very briefly, and I  
24 spoke with defense counsel about this before beginning today  
25 so I don't think there is going to be a dispute. I just want

1 to put on the record that -- and this will come up, I expect  
2 at the charging conference -- that under the 1960 charge Count  
3 Two, we want to make clear that Bitcoin qualifies as a fund  
4 under the statute. So we want to make sure that there is no  
5 dispute that if you are transmitting Bitcoin that it qualifies  
6 as transmitting money and the reason that this came to the  
7 Government's attention was that there was some  
8 cross-examination of Special Agent Infante about whether or  
9 not Bitcoin was a currency, whether or not it was treated as a  
10 currency for tax purposes.

11 So we just want to make sure that there's no jury  
12 confusion about that issue which we view as a legal issue and  
13 not an issue for the jury to decide.

14 THE COURT: And either she said she didn't know or I  
15 sustained an objection. But I think she said she didn't know  
16 without even any objection from the Government, right?

17 MS. KASSNER: That's right. We're not worried about  
18 any prejudice or anything having to do with her testimony, but  
19 that's what prompted us to think about this issue and we  
20 wanted it to be clear. We understand from defense counsel  
21 that there will be no argument that because this is Bitcoin it  
22 doesn't qualify as transmitting money but we wanted the record  
23 to be clear that our position is that that argument should not  
24 be raised. It's a legal argument and not a factual argument.

25 THE COURT: Mr. Singer, and use your microphone

O-Kain - direct - Kassner

349

1 please.

2 MR. SINGER: Judge, that is correct that under my  
3 understanding of the law that this Bitcoin has been  
4 interpreted by, I think, courts around the country as being  
5 funds --

6 THE COURT: For purposes of the unlicensed money  
7 transmitting statute?

8 MR. SINGER: Yes. So I don't intend to argue that  
9 it's not.

10 THE COURT: Great. Those are my favorite issues,  
11 non-issues. So, you folks can go around preparing for the  
12 rest of the day.

13 (Pause in proceedings.)

14 (Jury enters.)

15 THE COURT: Have a seat, everyone. Good to see you  
16 again. I hope you had a restful day and a half off and thank  
17 you all, again, for being so punctual. I really appreciate  
18 it.

19 We're going to resume now with the questioning of  
20 Agent O'Kain may resume.

21 I will remind you -- I don't know if you're still an  
22 agent -- Mr. O'Kain, you are still under oath.

23 **PATRICK O'KAIN,**

24 called as a witness, having been previously duly  
25 sworn, was examined and testified as follows:

O-Kain - direct - Kassner

350

1 CONTINUED DIRECT EXAMINATION

2 BY MS. KASSNER:

3 THE COURT: Go ahead, Ms. Kassner.

4 MS. KASSNER: Thank you, Your Honor.

5 At this time if we could show the witness what has  
6 previously been marked as Government Exhibit 622, and --

7 Apologies, Your Honor, one moment.

8 (Pause in proceedings.)

9 Q Can you see that image on the screen?

10 A Not yet.

11 (Exhibit published to witness only.)

12 Q Just let us know when you can see it on the screen.

13 A I can see it now.

14 Q Do you recognize what has been marked as Government  
15 Exhibit 622?

16 A I do.

17 Q What is this?

18 A This is a photograph of the Starbucks where I met the  
19 defendant.

20 Q And it is a fair and accurate depiction of the Starbucks  
21 where you met the defendant on September 21, 2018?

22 A Yes.

23 MS. KASSNER: Your Honor, permission to admit  
24 Government Exhibit 22 into evidence and publish it to the  
25 jury.

O-Kain - direct - Kassner

351

1 THE COURT: Any objection?

2 MR. SINGER: No, Your Honor.

3 THE COURT: 622 is admitted and you may publish it.

4 (Government Exhibit 622 received in evidence.)

5 Q And you also mentioned that on other dates you met the  
6 defendant at a Wendy's also in Sunnyside, Queens; is that  
7 correct?

8 A That's correct.

9 MS. KASSNER: Your Honor, permission to show the  
10 witness what's previously marked as Government Exhibit 621.

11 THE COURT: All right.

12 (Exhibit published to witness only.)

13 Q And please let us know when you can see it.

14 A I see 623 right now.

15 THE COURT: Did you say 621?

16 MS. KASSNER: One moment Your Honor, yes, 621.

17 A Okay, I can see 621 now.

18 Q Do you recognize Government Exhibit 621?

19 A I do.

20 Q What --

21 A That is the Wendy's in which I met the defendant at.

22 Q And is it a fair and accurate depiction of where you met  
23 the defendant on November 27, 2018, December 11, 2018 and  
24 January 24, 2019?

25 A Yes.

O-Kain - direct - Kassner

352

1 MS. KASSNER: At this time the Government would move  
2 to admit Government Exhibit 621 into evidence and publish it  
3 on the jury.

4 THE COURT: Any objection?

5 MR. SINGER: No, Your Honor.

6 THE COURT: 621 is admitted and you my publish.

7 (Exhibit published.)

8 BY MS. KASSNER:

9 Q Thank you. So, when we left off on Tuesday, we were  
10 discussing a further transaction that you had with the  
11 defendant on January 30, 2019. Do you remember that?

12 A Yes, I do.

13 Q And we had just shown you an image of the corner 1 East  
14 33rd Street in Manhattan. Do you recall that as well?

15 A Yes.

16 Q And, so that transaction, is it fair to say was in  
17 midtown Manhattan?

18 A That's correct.

19 Q Was that transaction recorded?

20 A Yes.

21 MS. KASSNER: Your Honor, at this time the  
22 Government would seek permission to play portions of  
23 Government Exhibit 807 for the jury.

24 THE COURT: All right.

25 MS. KASSNER: I'm going to turn to tab marked 807 R

O-Kain - direct - Kassner

353

1 in the transcript per.

2 THE COURT: And again, ladies and gentlemen, these  
3 transcripts are just an aid to listening to the audio but what  
4 you hear, as opposed to what's on the page, governs.

5 MS. KASSNER: If we could play from timestamp 9:05  
6 to timestamp 9:47.

7 (Audio played/audio paused.)

8 MS. KASSNER: If we could pause here.

9 Q Can you describe for the jury what's happening during the  
10 segment of the audio recording we just listened to?

11 A Yes, I met with the defendant and got into his vehicle.

12 Q And if we can continue playing from timestamp 11:27 to  
13 timestamp 12:10 and if we could turn the volume up just a bit.

14 (Audio played/audio paused.)

15 Q Can you describe to the jury what is happening during the  
16 recorded segment that we're listening to?

17 THE COURT: Ms. Kassner, you may want to point the  
18 jury to what page of the transcript you are on and I think the  
19 audio skipped maybe a page or two, at least by my reckoning.  
20 I think we're on page three of 807R where it says "35"?

21 MS. KASSNER: So, I think we're on page two.

22 THE COURT: Okay.

23 MS. KASSNER: So it starts "335, put it in the bag."  
24 Does everyone have that?

25 THE COURT: Maybe I'm crazy. I'm looking at page



O-Kain - direct - Kassner

354

1 two of 807jR?

2 MS. KASSNER: Your Honor it's -- so there's the  
3 cover page and then there's one page. That was the segment we  
4 listened to last and I believe the next page at the top says  
5 335.

6 THE COURT: It's numbered at the bottom two. Am I  
7 the only one that's having this issue? Maybe it's just me.  
8 So just to confirm we're on 807R; correct?

9 MS. KASSNER: Yes, Your Honor.

10 THE COURT: And the date is January 30, 2019?

11 MS. KASSNER: Yes, Your Honor.

12 THE COURT: And if you look at page two, you're  
13 saying at the top it says 35?

14 MS. KASSNER: So, there should be a page, there's  
15 the cover page and then there's one page on the left and then  
16 a page on the right.

17 THE COURT: No, but they're numbered. It says page  
18 two. Do we that I have different books?

19 MS. KASSNER: Your Honor, may we approach?

20 THE COURT: Absolutely. Maybe I don't have the same  
21 book as everyone else. I was in a different section of the  
22 binder. My apologies, everybody, and especially you,  
23 Ms. Kassner. Please continue.

24 BY MS. KASSNER:

25 Q So Mr. O'Kain if you could explain what we were just

O-Kain - direct - Kassner

355

1 listening to?

2 A The defendant was running cash through the money counter  
3 so that was the sound that you heard with the paper flipping.

4 Q Okay. And turning to the next page of the transcript.

5 MS. KASSNER: And if we could play timestamp 16:17  
6 to 17:16.

7 (Audio played/audio paused.)

8 Q Can you explain for the jury what you and the defendant  
9 were discussing here?

10 A We were discussing another transaction for the remaining  
11 30 K, 30,000 and the defendant was talking about who he would  
12 get that \$30,000 from.

13 Q And the defendant here says, "That idiot, my friend,  
14 maybe one time, yeah, he has the money. I have a lot of money  
15 with him but lazy motherfuckers here. His job is hookers."

16 What did you understand that to mean?

17 A So I understood that the defendant was saying his friend  
18 and where he was going to get that money, his -- he was  
19 getting that money from hookers and prostitution.

20 MS. KASSNER: If we could continue playing at time  
21 stamp 24:24 to 24:52.

22 (Audio played/audio paused.)

23 Q So here the defendant says that the car is bulletproof.  
24 What did you understand him to mean by that?

25 A Just that the defendant was telling me that his vehicle

O-Kain - direct - Kassner

356

1 was bulletproof and, frankly, I don't recall why he brought  
2 that up, but he was trying to imply that his vehicle was  
3 bulletproof.

4 Q And you say, "Who is going to be shooting at us, it's the  
5 guy that is back in California who wants the rest of the 100,  
6 that's who." Why did you say that?

7 A That was a reference to my cover story where I owed money  
8 to people back in California. And it's sort of a reference if  
9 you recall I mentioned to him that I had people that I owed  
10 money to and they would chop off of my head if I didn't pay  
11 them so it was just a reference to those same fictitious  
12 individuals in California.

13 MS. KASSNER: If we could continue playing from  
14 27:40, to 28:35.

15 (Audio played/audio paused.)

16 Q Here the defendant mentions a partner and he says the  
17 partner got the cash in the Hamptons and I sent Bitcoin from  
18 here.

19 What did you understand that to mean?

20 A I understood that the defendant was just describing an  
21 individual with whom he's transacting with and getting cash  
22 from and that's -- the defendant sent that individual  
23 Bitcoins.

24 Q And the defendant also says, "100 one time can we do  
25 split?" And then says, "It's that one is too much, man. With

O-Kain - direct - Kassner

357

1 100 bucks if we get -- if -- if we get in trouble we are both  
2 fucked up." Then he says, "40 is okay. 100, I told you. You  
3 don't tell me working that's --"

4 What did you understand that to be talking about?

5 A I understood that -- again, the defendant believed that  
6 transacting smaller amounts would -- it was safer than doing  
7 100. So I think 100 has come up a couple of times and that  
8 was the defendant's belief that if -- if we were transacting  
9 100 or larger, we would draw attention, but anything below  
10 that the defendant felt safer. And then to describe, you  
11 know, at the time when I was a special agent investigating  
12 this case that was just another indication that -- that I  
13 believe that the defendant knew that he was doing something  
14 elicit because otherwise there would be no talk of splitting  
15 things up to avoid getting in trouble.

16 Q And when you say -- when the defendant says "100," how  
17 much money exactly did you understand that to be referring to?

18 A \$100,000.

19 Q And when he says "40 is okay," how much money did you  
20 understand 40 to be referring to?

21 A \$40,000.

22 MS. KASSNER: If we could continue playing at time  
23 scam 32:40 to 33:04, please.

24 (Audio played/audio paused.)

25 Q Let's pause here. Rather than playing that section can

O-Kain - direct - Kassner

358

1 you tell us what happened with that? What happened after you  
2 had this conversation with the defendant?

3 A If I recall correctly, the way Bitcoin works, you send  
4 Bitcoin and it has to go through the block chain and there's a  
5 series of several confirmations that ---- kind of the more  
6 confirmations you get, the more trusted that the money  
7 actually landed in that wallet and it was taking quite a while  
8 for those confirmations to come through. So that's what we  
9 were waiting for. Through that transaction it took quite a  
10 while. But once we determined that we were comfortable that  
11 the transaction went through, I left the meeting.

12 MS. KASSNER: If we could show you -- if we could  
13 publish on the jury what's been previously been admitted as  
14 Government Exhibit 5.

15 (Exhibit published.)

16 BY MS. KASSNER:

17 Q Do you recognize Government Exhibit 5.

18 A I do. This is a photograph of the receipt from our  
19 undercover cryptocurrency wallet.

20 Q And how much Bitcoin did you provide to the defendant on  
21 January 30, 2019?

22 A 13.67287 Bitcoin.

23 MS. KASSNER: If we could pull up what's been  
24 previously admitted as Government Exhibit 61 -- 613 and  
25 publish it to the jury.

O-Kain - direct - Kassner

359

1 (Exhibit published.)

2 BY MS. KASSNER:

3 Q What is Government Exhibit 613?

4 A This is a photograph of the cash that the defendant gave  
5 to me during the transaction.

6 Q Did you meet with the defendant again after January 30,  
7 2019?

8 A Yes.

9 MS. KASSNER: If we could pull up and publish to the  
10 jury what's been previously admitted as Government Exhibit  
11 507.

12 (Exhibit published.)

13 Q And on page one of Government Exhibit 507 starting at  
14 6:05 p.m. on April 1st, can you read your messages in light  
15 gray to the right and I'll read the defendant's messages in  
16 dark gray to the left?

17 A "Hey."

18 Q "Hi."

19 A "Just seeing if you are going to be around next week or  
20 the week after."

21 Q "Yes. I am around."

22 A "How much could you do?"

23 Q "Who is this? Sorry, history deleted."

24 What did you understand the defendant's last message  
25 to mean?

O-Kain - direct - Kassner

360

1 A I understood that the defendant deleted the Signal chat  
2 history from our previous conversations.

3 Q Turning to page two of Government Exhibit 507, at the  
4 bottom on April 22, 2019, if you could continue reading your  
5 messages to the right and I'll read the defendant's messages  
6 on the left.

7 A "Hey, dude. Can you meet up next week? I'm flying back  
8 from L.A. Saturday or Sunday."

9 Q "How much?"

10 And if we could continue on to the next page and  
11 continue reading.

12 A "I need 100.

13 Q Dude, I can do 49,999. I am a Bitcoin trader, not a  
14 money laundering guy. I refuse when I feel Bitcoin buyer is  
15 drug guy. Yup, real. I don't care of income. I refused a  
16 lot because they look alike, dirty. That's why limited. Can  
17 give you rest next day whatever you want. No bad man here.

18 A I can do 49,999. Anything helps. I know you don't like  
19 to do more than 50 at a time. Hey, man, are you good for next  
20 week?

21 Q Yes, good. You Saturday or Sunday?"

22 So, I want to pause here. Here you say "I need 100"  
23 and the defendant says "Dude, I can do \$49,999." What did you  
24 understand his response to mean?

25 A I understood that he again felt that doing amounts up to

O-Kain - direct - Kassner

361

1 100 were risky and he wanted to keep the amount under 50,000  
2 or around 50,000.

3 Q The defendant goes on to say, I am Bitcoin trader not  
4 money laundering guy. I refuse when I feel Bitcoin buyer is  
5 drug guy. And then he says that's why limited. Can give you  
6 rest next day whatever you want.

7 What did you understand him to be saying there?

8 A I understood that he was implying that he is not doing  
9 anything wrong and that's why he wants to do less than 100.  
10 He says that he is not a drug guy. But based on the  
11 circumstances of the entire investigation up to this point, I  
12 felt that he was just trying to imply that while his  
13 actions --

14 MR. SINGER: Objection, Your Honor.

15 THE COURT: Sustained as to the last part of the  
16 answer.

17 BY MS. KASSNER:

18 Q After sending this message to you did the defendant  
19 refuse to meet with you?

20 A No.

21 Q Did he ask for clarification about where your money was  
22 coming from?

23 A No.

24 Q Did he ask you to confirm that you were not a drug  
25 dealer?



O-Kain - direct - Kassner

362

1 A No.

2 Q What did he do instead?

3 A We set up more transactions.

4 Q So turning to page four, the next page of this Government  
5 Exhibit 507, if we could scroll down. Here we are. In the  
6 middle of the page on April 26, 2019, the defendant asks:

7 "Do you want to sell?" How did you respond?

8 A "Yeah. Can you do 50 on Tuesday?"

9 Q "Okay, text when ready."

10 And if we could turn to page seven of this exhibit,  
11 here at 12:28 p.m. you write:

12 "Five out." The defendant responds "coming Wendy."  
13 You write "Okay where?" The defendant responds backside.  
14 What happened right after the defendant wrote backside on  
15 April 30, 2019?

16 A I believe I get into the -- meet up with the defendant  
17 again.

18 Q Was your interaction with the defendant recorded?

19 A Yes.

20 MS. KASSNER: Permission to play portions of  
21 Government Exhibit 809.

22 THE COURT: You may.

23 MS. KASSNER: And I'm turning to the portion of the  
24 transcript marked 809 with an R on top. If we could start at  
25 timestamp 13:05 and end at 15 minutes.

O-Kain - direct - Kassner

363

1 THE COURT: In case anyone is concerned, I'm on the  
2 same page.

3 (Audio played/audio paused.)

4 MR. NAVARRO: Your Honor, one second. We're just  
5 having a technical problem.

6 THE COURT: All right.

7 (Audio played/audio paused.)

8 BY MS. KASSNER:

9 Q Can you tell the jury where you were seated during this  
10 conversation?

11 A I was inside the defendant's vehicle. I can't recall if  
12 I was in the back or the front seat though.

13 Q When the defendant asked about your business, you say,  
14 "booming. I'm making tons of money, man." Why did you say  
15 that?

16 A That was a continuation of my cover story that I was  
17 selling drugs online and I was letting the defendant know that  
18 I had consistent money coming into the business.

19 Q The defendant asked about a cannabis farm and you  
20 respond, "I don't make -- I don't make them as much as  
21 cannabis." You say, "I sell pounds of that in California but  
22 the real money is in Adderall and the pills." Why do you say  
23 that?

24 A I wanted to make it clear to the defendant again that the  
25 money was not coming from just cannabis but also more of it

O-Kain - direct - Kassner

364

1 was coming from Adderall and the other pills. The reason I  
2 said that was because based on the uncertain legalities of  
3 marijuana at the time in California I wanted to make sure that  
4 this money was coming from Adderall and other controlled  
5 substances.

6 Q After you mentioned the Adderall and the pills, how does  
7 the defendant respond?

8 A He asks how much do I want, meaning how much money do I  
9 want for this transaction to work.

10 MS. KASSNER: If we can continue playing starting at  
11 15 and ending at 16.

12 Q What is happening during this section of the recording we  
13 just listened to?

14 A I'm clarifying with the defendant how much money we're  
15 going to transact. And the defendant again reiterates that he  
16 doesn't like to do large amounts, like 100,000 and then we  
17 start to count the money or send the money through the money  
18 counter and there were some technical difficulties with the  
19 money counter but ultimately it sounds like the money cycled  
20 through the machine.

21 Q And here you say "I always need the 100." Why do you say  
22 that?

23 A Just to let the defendant know that I still need to  
24 transact more money from my online drug business.

25 Q And the defendants response is he's, scared from the

O-Kain - direct - Kassner

365

1 hundreds, man. What did you understand that to mean in  
2 particular?

3 A Just again that he doesn't like to do \$100,000 because he  
4 believes that that is an amount that could potentially draw  
5 attention and get him in trouble.

6 MS. KASSNER: And if we could continue playing from  
7 timestamp 18:50 to 19:33.

8 (Audio played/audio paused.)

9 Q Here the defendant says, "Somebody told me you can buy  
10 cannabis farm in California to do cannabis business." You  
11 respond and, "Say still risky though, my buddy got arrested  
12 the other day."

13 What do you mean by that?

14 A I made that part up. That was just setting the stage to  
15 let the defendant know that marijuana was illegal federally,  
16 still.

17 Q And the defendant asks, "Why is that and you say still  
18 federally. I mean, he got arrested by the feds." Why did you  
19 say that?

20 A Just to let the defendant know that that marijuana was  
21 illegal federally because part of what the defendant believed  
22 I was selling was marijuana and I was letting him know that  
23 that is illegal as well.

24 Q Is marijuana a controlled substance under federal law?

25 A It is.

O-Kain - direct - Kassner

366

1 Q The defendant says, got to be in California. If you go  
2 out it's trouble, right? What did you understand him to mean  
3 there?

4 A I understood that the defendant was aware that there were  
5 different laws between California and outside of California.  
6 And that if you sell marijuana outside of California, he knew  
7 that you could get in trouble.

8 Q If we could continue playing at timestamp 21:45 to 22:34.  
9 (Audio played/audio paused.)

10 Q What is happening during the segment of the recording we  
11 just listened to?

12 A The defendant is running money through the money counter  
13 and, I believe he's offering more -- he had more money that he  
14 was willing to transact with me at that time.

15 Q So the defendant asks -- he says, that's 50, this is 25,  
16 total 75. How much did you understand that he was offering to  
17 exchange in total?

18 A \$75,000.

19 Q And is this -- just for clarity is this before or after  
20 your conversation with the defendant about whether or not  
21 marijuana is legal in California, out of California?

22 A It's right afterwards.

23 Q And if we could finish playing until timestamp 23:40.  
24 (Audio played/audio paused.)

25 Q So during the first half the recording, you are speaking

O-Kain - direct - Kassner

367

1 to somebody other than the defendant. Who are you talking  
2 to?

3 A That was a call to former Special Agent Allan Liefke.

4 Q And what did you discuss with Special Agent Liefke?

5 A So, prior to this specific transaction with the  
6 defendant, myself and the entire investigative team working on  
7 this case determined that that was going to be the time that  
8 we arrested the defendant. And prior to the meeting, we  
9 agreed on a specific arrest Signal and when I called Special  
10 Agent Liefke, what was when I gave him the arrest Signal and I  
11 will pause there.

12 Q What happened during the second portion of the  
13 recording?

14 A When you hear the yelling, is that -- so, yeah, that's --  
15 there was an arrest team and the defendant and I were sitting  
16 in the back of the defendant's vehicle and the DEA arrest team  
17 came up and opened the car doors, announced police, and  
18 arrested both the defendant and myself but that part of when I  
19 was arrested that was still in an undercover capacity.

20 Q Why did they arrest you?

21 A We weren't -- depending on how the arrest of the  
22 defendant went, I wasn't sure if it was going to be more  
23 beneficial to the investigation if I remained as an undercover  
24 and the defendant thought that I was under arrest with him or  
25 if at that time I should let the defendant know that I was an

O-Kain - direct - Kassner

368

1 undercover agent. So we didn't know how that was going to  
2 play out. So initially I was just arrested, fictitiously  
3 arrested, to convince the defendant that I was still a  
4 criminal.

5 Q Did you ever actually transfer Bitcoin to the defendant  
6 on April 30, 2019?

7 A No.

8 Q And did you ever actually receive the cash from the  
9 defendant?

10 A Yes.

11 Q -- well -- in exchange?

12 A Not an exchange but we did see that cash that was in  
13 the car that the defendant planned to exchange to me for  
14 Bitcoin.

15 MS. KASSNER: If we could pull up just for the  
16 witness what's been previously marked as Government Exhibit  
17 304 published to witness only.

18 Q Let me know when you see it?

19 A I see it.

20 Q What is Government Exhibit 304?

21 A This is a map of the broader New York area and on it --  
22 displayed on the map are the locations, the general locations  
23 all of the transactions that we just went through with the  
24 defendant.

25 MS. KASSNER: Permission to admit Government Exhibit

0-Kain - direct - Kassner

369

1 304 into evidence and publish to the jury.

2 THE COURT: Any objection?

3 MR. SINGER: No, Your Honor.

4 THE COURT: 304 is admitted.

5 (Government Exhibit 304 received in evidence.)

6 THE COURT: And you may publish.

7 (Exhibit published.)

8 (Continued on the following page.)

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O'KAIN - DIRECT - MS. KASSNER

370

1 BY MS. KASSNER: (Continuing.)

2 Q Are these all of the locations where you met the  
3 defendant in 2018 and 2019?

4 A Yes.

5 MS. KASSNER: If we could show just to the witness  
6 what has been previously marked as Government's Exhibit 1101.

7 Q And if you could let us know when you see it on your  
8 screen.

9 A I see it.

10 Q Do you recognize Government's Exhibit 1101?

11 A I do.

12 Q Did you review --

13 Let's start by asking, what is Government's  
14 Exhibit 1101?

15 A This is a summary chart of the transactions that I  
16 conducted with the defendant and the amounts of BitCoin that I  
17 provided. The amount of cash that the defendant provided to  
18 me and the commission that the defendant took for those  
19 transactions.

20 Q Did you review Government's Exhibit 1101 and ensure that  
21 it accurately summarized the amounts you and the defendant  
22 exchanged and the commissions that the defendant charged on  
23 the listed dates in 2018 and 2019?

24 A Yes.

25 MS. KASSNER: Your Honor, I ask that Government's

O'KAIN - DIRECT - MS. KASSNER

371

1 Exhibit 1101 be admitted into evidence and published to the  
2 jury.

3 THE COURT: Any objection?

4 MR. SINGER: No, Your Honor.

5 THE COURT: 1101 is admitted and you may publish.

6 (Exhibit published.)

7 Q In total, how much BitCoin -- how much cash -- I'll ask  
8 it this way.

9 In total, how much cash did the defendant provide to  
10 you in exchange for the BitCoin you sent to him?

11 A \$133,190.

12 Q During all of the times that you met with the defendant,  
13 did he ever ask for your name?

14 A No.

15 Q Did he ever ask for a form of identification?

16 A No.

17 Q Did he ever ask for your date of birth or a driver's  
18 license number?

19 A No.

20 Q Your social security number?

21 A No.

22 Q Did he ever mention anything -- I guess, did he ever ask  
23 where you got the money from?

24 A No.

25 Q The BitCoin from?

A No.

O'KAIN - CROSS - MR. SINGER

372

1 Q And did he ever ask you to confirm that you got the  
2 BitCoin from legal transactions?

3 A No.

4 MR. SINGER: One moment, Your Honor.

5 THE COURT: All right.

6 MR. SINGER: No further questions.

7 Thank you.

8 THE COURT: Thank you very much.

9 Mr. Singer, cross examination.

10 CROSS-EXAMINATION

11 BY MR. SINGER

12 Q Mr. O'Kain, good morning, sir.

13 A Good morning.

14 Q We never met before, correct?

15 A Correct.

16 Q So you just testified about the meeting that you had with  
17 Mr. Goklu on April 30th of 2019, the day that he was placed  
18 under arrest, correct?

19 A Yes.

20 Q And you indicated that you had made some statements to  
21 Mr. Goklu about Adderall or pills, then you said that part of  
22 the reason for that was because of the, I think, you said the  
23 uncertain legality of surrounding marijuana in California; is  
24 that right?

25 A Yeah. That's what I said.

O'KAIN - CROSS - MR. SINGER

373

1 Q In 2018 and 2019, the growing and selling of marijuana in  
2 licensed businesses was legal; was it not under California  
3 law?

4 A Under --

5 Q California law.

6 A California law. You know, I know I knew this for certain  
7 at one point. I don't -- at this time, I don't exactly know  
8 what the laws were. I know there was some loosening of  
9 restrictions on the sale of marijuana in the State of  
10 California, but I do know that this was sold very legal  
11 federally at that time.

12 Q Thank you. But that wasn't my question. My question had  
13 to do with the state laws in California. There were legal  
14 cannabis farms. Farms where cannabis was being grown by  
15 farmers for sale in state licensed dispensaries in California;  
16 were they not?

17 Are you telling us that you are not aware of that?

18 A I believe so. I just explained my understanding.

19 Q You believe that that is true, that farmers legally grew  
20 marijuana on farms and sold it to licensed state licensed  
21 dispensaries that were operating legally in the State of  
22 California?

23 A I believe that's correct.

24 Q You know that's correct. You were a DEA agent. And you  
25 know that was correct and you knew that it was correct in

O'KAIN - CROSS - MR. SINGER

374

1 April 30, 2019; didn't you?

2 A It was several years sine I have been a DEA agent. But  
3 I'm sure at the time when I was a DEA Agent, I had a better  
4 understanding of the intricacies of the legal status of  
5 marijuana at that time.

6 Q And, in fact, it's the same as what's happening now in  
7 New York where the State is beginning to license dispensaries  
8 for the legal sale of marijuana here, correct?

9 A I have no idea what is happening with the status of  
10 marijuana at this time. Like I said, I'm not a special agent  
11 anymore.

12 Q You don't have to be a DEA Agent to read the news and be  
13 aware of changes in the law.

14 Are you telling us that you're not aware of New  
15 York State is in the process of licensing dispensaries of the  
16 legal sale of marijuana in the State of New York?

17 THE COURT: Sustained as to relevance.

18 Q And today, it's still -- marijuana to your knowledge, if  
19 you know this, it's still illegal federally, correct?

20 A Yes.

21 Q Are you aware that in many states that marijuana is sold  
22 under state law legally?

23 MR. SINGER: Objection, Your Honor.

24 THE COURT: I'll allow this one question.

25 If you know.

O'KAIN - CROSS - MR. SINGER

375

1 A I'm sorry, sir. I don't follow the drug laws now. I  
2 clearly don't have time for that.

3 Q So after -- well, after you told Mr. Goklu in this  
4 April 30th meeting, that about marijuana is -- or that you  
5 were selling pills or whatever, Mr. Goklu came back and asked  
6 about buying a cannabis farm in California, correct?

7 A Yes.

8 Q Even after you told him that this was not -- that  
9 federally it was illegal. He's still talking about a legal --  
10 what you understood him to mean was a legal cannabis farm in  
11 California?

12 A I would have to go back to the transcript to see the  
13 sequence of the conversation.

14 Q Then a little bit after that, Mr.-- you indicated to  
15 Mr. Goklu something to the effect that there were different  
16 laws in and out -- inside and outside of California regarding  
17 marijuana; is that right?

18 A I think I said that a friend of mine was arrested because  
19 it was federally illegal and he was arrested by the Feds.

20 Q Well, you told us in your testimony just a few moments  
21 ago, that your understanding of what Mr. Goklu was saying to  
22 you was that Mr. Goklu was aware that there were different  
23 laws inside and outside of the State of California; is that  
24 right?

25 A I think more accurately, the defendant was letting me

O'KAIN - CROSS - MR. SINGER

376

1 know he was aware that it was -- you could get in trouble  
2 outside of California.

3 Q Selling marijuana, correct?

4 A Yes.

5 Q Was Mr. Goklu selling marijuana to you during any of  
6 these transactions?

7 A No.

8 Q Were you selling marijuana to Mr. Goklu during any of  
9 these transactions?

10 A No.

11 Q Was there any discussions about sale of marijuana outside  
12 of California in any of these conversations?

13 A I'd have to go back. Again, I don't necessarily think it  
14 was specifically stated that marijuana sales were occurring  
15 outside of California.

16 Q The discussions that you had with Mr. Goklu had do with  
17 the growing and sale of marijuana in the State of California;  
18 would you agree with that?

19 A Part of our discussions were about that.

20 Q All right. So let me step back a bit.

21 Other than the text that have been introduced into  
22 evidence and these are the signaled texts between you and  
23 Mr. Goklu that led up to each one of the meetings that you had  
24 with him. And the recordings that were made of your meetings  
25 with him.

O'KAIN - CROSS - MR. SINGER

377

1           There were no other communications with Mr. Goklu,  
2 correct?

3       A     That's correct.

4       Q     And you had initially found Mr. Goklu on the  
5 localbitcoins.com website, correct?

6       A     That's correct.

7       Q     And that site, localbitcoins.com, is it still operating  
8 today?

9       A     I have not checked.

10      Q     Now, at the time that you determined that you were going  
11 to reach out to Mr. Goklu, you did so because you suspected  
12 that he might be involved in laundering drug money, correct?

13      A     Correct.

14      Q     That's why you selected him from other people that were  
15 advertising on the localbitcoins site, correct?

16      A     That was -- the investigation started to identify if that  
17 theory was correct. Why we selected the defendant was because  
18 of the larger amounts that he was advertising his ability to  
19 transact that was sort of the primary reason.

20      Q     Okay. But again, it was a suspicion that you had based  
21 on the information you saw on the website?

22      A     Yeah. So we -- like I testified to earlier, from other  
23 unrelated DEA investigations, we became aware that money was  
24 being laundered -- drug money was being laundered through  
25 localbitcoins.com.



O'KAIN - CROSS - MR. SINGER

378

1 Q Understood. That's why you went looking at that website.

2 But at the time you and your fellow agents decided  
3 on that you would focus some attention on Mr. Goklu, it was a  
4 suspicion that you had; is that right?

5 A Sure.

6 Q You didn't have any affirmative evidence or proof that  
7 Mr. Goklu was laundering drug money; did you?

8 A No.

9 Q So you went into your meetings with Mr. Goklu for the  
10 purpose of determining whether the suspicions would be borned  
11 out?

12 A Correct.

13 Q And if you had determined that, at any point, they were  
14 not borned out, you would of dropped your interest in  
15 Mr. Goklu and gone looking for someone else who you were  
16 suspicious of?

17 A That's correct.

18 Q Now, each meeting that you had with Mr. Goklu, and there  
19 were seven of them, right?

20 A Correct.

21 Q From August through April. August of 2018 to August of  
22 2019, there were seven meetings, right?

23 And each time the meeting was essentially the same  
24 to the extent that Mr. Goklu brought cash, right?

25 A Um-hmm --

O'KAIN - CROSS - MR. SINGER

379

1 Q You have say yes or no for the record. I'm sorry.

2 A Yes.

3 Q Mr. Goklu would count out the money. You'd agree on an  
4 amount and Mr. Goklu would count out the money, right?

5 A Yes.

6 Q You would agree on the fee that he was charging?

7 A Yes.

8 Q You would then initiate the transfer of BitCoin to  
9 Mr. Goklu, correct?

10 A Yes.

11 Q And then, each time you had to wait for the BitCoin  
12 transfer to take place; is that right?

13 A Yes.

14 Q And sometimes that transfer and the confirmation that you  
15 would receive would happen quickly and sometimes it would drag  
16 on for awhile?

17 A Correct.

18 Q Maybe a half an hour, 45 minutes, something like that?

19 A Correct.

20 Q But each time, I think the longest meeting would have  
21 been up to an hour, you walked away with the cash and he  
22 received the BitCoin, right?

23 A Yes.

24 Q And in each one of the transactions, the -- Mr. Goklu was  
25 receiving a fee, right?

O'KAIN - CROSS - MR. SINGER

380

1 A Yes.

2 Q He was making money on each one of the transactions?

3 A Yes.

4 Q Now, the BitCoin that Mr. Goklu was receiving from you,  
5 it varied in price from day-to-day, correct?

6 A Yes.

7 Q And in fact, the first meetings that you had the rate,  
8 the BitCoin rate, exchange rate, was something over \$7,000 per  
9 BitCoin; is that right?

10 A I would have to go back and check, but --

11 Q Well, on the reports that you verified and are in  
12 evidence.

13 THE COURT: You want to pull up 1101.

14 MR. SINGER: No.

15 THE COURT: The summary of the docket.

16 MR. SINGER: It doesn't have the information, Judge,  
17 one moment.

18 THE COURT: I'm sorry. It didn't have the rate.

19 MR. SINGER: We'll start with Government's Exhibit  
20 -- I think it's one actually.

21 Ms. Sahli, if you could pull up Government's  
22 Exhibit 1. Actually, Government's Exhibit 7. I think they're  
23 not in date order.

24 THE COURTROOM DEPUTY: Previously admitted.

25 Q All right. Mr. O'Kain, you see this is the -- you

O'KAIN - CROSS - MR. SINGER

381

1 indicated was the photo of the transaction receipt from  
2 August 28th of 2018, correct?

3 A Yes.

4 Q And on that receipt it indicates the exchange rate at the  
5 time?

6 A Correct.

7 Q That was the exchange rate for one BitCoin; is that  
8 correct?

9 A Yes, correct.

10 Q It was \$7,114.57?

11 A Correct.

12 MR. SINGER: Can we jump to the December 11th. The  
13 screen is not working.

14 THE COURTROOM DEPUTY: Hold on.

15 Exhibit 3, previously admitted.

16 Q Okay. You are able to see this exhibit?

17 A Yes.

18 Q And this was from the photo of the transaction receipt  
19 from December 11, 2018, correct?

20 A Correct.

21 Q And the exchange rate at this time was 3,000 --  
22 \$3,342.33, correct?

23 A Correct.

24 Q So less than half of the exchange rate in August?

25 A Correct.

O'KAIN - CROSS - MR. SINGER

382

1 Q And, in fact, Mr. Goklu indicated to you during the  
2 course of some of these transactions that he had actually lost  
3 money in the some of the transactions with you because of the  
4 change in the price of BitCoin?

5 A He did.

6 Q But in each one of the transactions, each time you met  
7 with him, he was making some money from the fee?

8 A Correct.

9 Q And losing money if the value of the BitCoin dropped?

10 A Correct.

11 MR. SINGER: Thank you, Ms. Sahli. I don't need  
12 that anymore.

13 Q Now, you indicated that your cover story as an undercover  
14 officer was that you were an online drug dealer selling drugs  
15 online in exchange for BitCoin, correct?

16 A Correct.

17 Q Now, in the text, the Signal text messages that you sent  
18 to Mr. Goklu, you never indicated to him that that's who you  
19 were and what you were doing, correct?

20 A Well, I --

21 Q Did you ever tell him that you were selling drugs  
22 directly?

23 A Yes.

24 Q In the text messages?

25 A No, not in the text messages.

O'KAIN - CROSS - MR. SINGER

383

1 Q Okay. So nothing ever came up in the text messages?

2 A No.

3 Q And when you first met with Goklu on -- Mr. Goklu on  
4 August 28th of 2018, you didn't tell him that you were selling  
5 drugs?

6 A Correct.

7 Q Or that your business was selling drugs and the BitCoin  
8 that you were seeking to exchange was from the sale of drugs;  
9 is that right?

10 A That's correct.

11 Q And you didn't tell him that on September 21st of 2018,  
12 correct?

13 A That's correct.

14 Q And you didn't tell him that in November of 2018; did  
15 you?

16 A I did not.

17 Q And you started to hint at it a little bit in December --  
18 on December 11th of 2018?

19 A Yes.

20 Q And that was the first time?

21 A Correct.

22 Q So prior to the December 11th meeting, was there any  
23 basis -- based on anything that you had told to Mr. Goklu, was  
24 there any reason for him to believe that you were selling --  
25 that the BitCoin that you were exchanging with him was from

O'KAIN - CROSS - MR. SINGER

384

1 the sale of illegal drugs?

2 A Can you repeat that question?

3 Q Well, I'll state it affirmatively.

4 There was no information that you had provided to  
5 Mr. Goklu in those first four conversations that would lead  
6 him to believe that the BitCoin had been obtained from selling  
7 illegal drugs; isn't that correct?

8 A Yeah. Not necessarily.

9 Q Not necessarily?

10 A He would -- I think if you could state that a different  
11 way. Well, I guess, I did not specifically state anything  
12 about drugs during those interactions, that's correct.

13 Q Well, in fact, you testified -- I think it was yesterday  
14 or maybe on Monday afternoon -- that Tuesday or Monday  
15 afternoon, that people -- well, the prosecutor had asked you  
16 whether you said anything in that first meeting about drugs  
17 and your answer was that people that are involved in the drug  
18 business don't talk about it openly; is that right?

19 A That's correct.

20 Q Right. The first rule of fight club is that you don't  
21 talk about fight club, right?

22 A So the movie goes.

23 Q So the movie goes.

24 And that's essentially is what your sayings, is the  
25 cultural of people who are involved in buying or selling or

O'KAIN - CROSS - MR. SINGER

385

1 laundering money from drugs, that people involved in to don't  
2 talk about it directly.

3 That's your experience as an undercover officer with  
4 the DEA?

5 A Yes.

6 Q And is that -- it's not a rule. Would it be fair to call  
7 it a custom or practice of people who are involved in illegal  
8 drug transactions?

9 A Yeah. I think it would be -- and this is based on my  
10 experience when I was at the DEA. It would be highly  
11 irregular for two individuals that don't know each other to  
12 openingly discuss any illegal things that they are doing.

13 Q Well, I understand that. That's what you testified to  
14 and that is sort of a practice or custom that was understood  
15 for people who are involved in the drug business, correct.

16 A That's correct.

17 Q Again, that's based on your experience that people in the  
18 drug business kind of knew that you don't talk about it  
19 openingly, right?

20 A That's correct.

21 Q And you said that's why you didn't talk about it or  
22 didn't raise that in your first meeting with Mr. Goklu?

23 A That's correct. And also it would be -- it would just be  
24 out of character.

25 Q It would be out of character for someone who is involved



O'KAIN - CROSS - MR. SINGER

386

1 in the drug business?

2 A That's correct.

3 Q And people in the drug business know that, right?

4 A I believe so, yes.

5 Q And people that are not part of the drug business would  
6 have no reason to know that, correct?

7 A Perhaps.

8 Q But in the first meeting with Mr. Goklu, on three  
9 separate occasions Mr. Goklu started talking about drug  
10 dealing, right?

11 A Yes.

12 Q Did that -- withdrawn.

13 He told you right when you got into the car and he  
14 asked you to close the door, he says, we're not drug dealers,  
15 right?

16 A He did say that.

17 Q And then, a short while later when referring to security  
18 cameras on buildings that were nearby, he -- what he said was  
19 what someone who was viewing the cameras if they came to the  
20 car might say, Hey, are you a drug dealer, right?

21 That's what he said to you in that meeting?

22 A I'm sorry, what's your question though?

23 Q He said that to you, correct?

24 A He said --

25 Q Hey, are you a drug dealer? Meaning, someone who would

O'KAIN - CROSS - MR. SINGER

387

1 view the security cameras and come over to the car?

2 A Yeah. Something to that effect. Sure.

3 Q And he also reference the money counting machine and said  
4 that the police might view a money counting machine as being  
5 evidence that you're a drug dealer, right?

6 A Yes.

7 Q So three times the person that -- Mr. Goklu, in your  
8 first meeting with you references drug dealing, correct?

9 A He references drug dealing. I don't know if that was  
10 three times.

11 Q Yes. He did three times. Right?

12 A I would have to go back. I remember him saying it once  
13 and then implying other things or not necessarily directly  
14 implying.

15 Q I'm not playing the tapes. The jury can listen to the  
16 recordings.

17 So didn't this -- I guess, the unusual aspect of  
18 Mr. Goklu openingly referencing drug dealing to you in your  
19 first meeting, didn't that offer you an opportunity to try to  
20 hint to Mr. Goklu that in fact your business was selling  
21 drugs?

22 A At that time, no.

23 Q It didn't offer you that opportunity?

24 A No.

25 Q You could have said something? Was there anybody

O'KAIN - CROSS - MR. SINGER

388

1 muzzling you?

2           You could have suggested in some way to Mr. Goklu,  
3 laughed about it, or something to try to convey to Mr. Goklu  
4 that in fact that that's what you were involved with and you  
5 chose not to?

6 A     I chose not to.

7 Q     Yes, but you could have.

8 A     I chose not to --

9 Q     But you could have. Please listen to my question, not  
10 what you want to say.

11           You could have?

12 A     I could have said a lot of things and I chose to say what  
13 I did.

14 Q     Now, couldn't you have possibly saved you and your fellow  
15 agents a lot of time if you would have somehow suggested to  
16 Mr. Goklu when he raises the issue of drug dealing, if you  
17 would have somehow suggested to him that's what you were  
18 involved in and he either would have gone along, and in which  
19 case you would have had a real solid ground for continuing  
20 your investigation or made clear to you, I don't deal with  
21 that, and you could have stopped your focus on him and gone  
22 onto someone else.

23           You could have done that, correct?

24 A     That could potentially have out of the infinite scope of  
25 things I could have said, sure, but at that time I --

O'KAIN - CROSS - MR. SINGER

389

1 Q You didn't.

2 A The reason --

3 Q Thank you. You've answered my question, sir.

4 Now, Mr. Goklu repeated concerns to you about the  
5 police?

6 A Yes, correct.

7 Q And he also told you why he was concerned about the  
8 police; didn't he?

9 A Yes. He didn't want to get caught doing something  
10 illegal.

11 Q Well --

12 A That's how I --

13 Q That's not quite.

14 A That's how I understood it.

15 Q Okay. I'm not interested in your interpretations, sir.  
16 I'm interested in what he may have said to you.

17 Now, isn't it a fact that he expressed to you that  
18 if police found two people in a car with a large amount of  
19 cash and a money counting machine, they would -- the police  
20 would believe that you are doing something illegal; whether  
21 you are or not, correct?

22 A That's what you understood, yes.

23 Q And if the police saw something that they thought might  
24 be illegal, they would seize first and ask questions later,  
25 right? Isn't that what he was expressing to you?

O'KAIN - CROSS - MR. SINGER

390

1 A I don't think that I understood it that way at the time.

2 Q Well, Mr. Goklu told you -- expressed to you at various  
3 times that he understood that if money was seized from him  
4 that he would get the money back; didn't he?

5 A Yes.

6 Q And that the police would seize the money, possibly the  
7 money counting machine, and possibly even the BitCoin,  
8 correct?

9 A Correct.

10 Q And that essentially it would be an enormous  
11 inconvenience and you'd be without the money for sometime  
12 until you were able to get it back, right?

13 A I don't know if that ever was articulated.

14 Q Well, do you recall him on November 27th of 2018, telling  
15 you that he wasn't concerned about jail, we're not talking  
16 about jail, but that the police would keep the money for days.

17 A Yeah.

18 Q Do you recall him telling you that?

19 A He expressed concern about the money being seized.

20 Q No. That's not my question.

21 He told you that it's not jail. He's not concerned  
22 about jail. He's concerned about the money being taken away  
23 from him. At that point he said for days.

24 A Okay. You know, I just want --

25 Q You don't recall?

O'KAIN - CROSS - MR. SINGER

391

1 A I want to make sure I'm answering accurately.

2 MR. SINGER: Ms. Sahli, could you play that portion  
3 from November 27th.

4 THE COURTROOM DEPUTY: Which exhibit?

5 MS. SAHLI: 803.

6 THE COURTROOM DEPUTY: I'm sorry, which one?

7 THE COURT: 803.

8 Do you want to refer to the jury to the transcript?

9 MS. SAHLI: Page 15 in the transcript. The full  
10 transcript at the back of your binder.

11 THE COURT: Ladies and Gentlemen, if you note, which  
12 is where I was before. At the back of your binder, you have  
13 the full transcripts or transcripts of the fuller portions of  
14 the recordings and they don't have an R. And so, if you look  
15 at 803, apparently Ms. Sahli is saying that you should start  
16 at Page 15; is that right?

17 Did you say, Ms. Sahli, 15?

18 MS. SAHLI: Yes, Page 15.

19 THE COURT: Of transcript 803.

20 And the timestamp is?

21 MS. SAHLI: 27:52.

22 THE COURT: Starting at 27:52. Thank you.

23 (Audio recording played.)

24 (Audio recording stopped.)

25 Q So Mr. O'Kain, Mr. Goklu in fact told you it's not jail,  
correct?

O'KAIN - CROSS - MR. SINGER

392

1 A That's right.

2 Q And the police are going to keep your money two or  
3 three days?

4 A That's correct.

5 Q That's what he expressed to you as his concern about the  
6 police seeing what the two of you were doing in the car,  
7 right?

8 A Correct.

9 Q Okay. And on January -- yes.

10 On January 24th of 2019, Mr. Goklu indicated to you  
11 that it could take a year to get your money back; didn't he?

12 Do you remember that?

13 A I recollect that. I believe it. I just want to -- when  
14 I -- I just want to make sure I'm answering the questions  
15 accurately.

16 Q Well, the question is very specific. Did Mr. Goklu tell  
17 you on January 24th of 2019 in relation to the money being  
18 seized by the police that they keep your money -- that it  
19 could take a year to get your money back?

20 A I believe so.

21 Q You believe so.

22 MR. SINGER: Ms. Sahli, could we play the segment  
23 from January 24th and this is in -- what's the exhibit?

24 MS. SAHLI: Government's Exhibit 806 already in  
25 evidence.

O'KAIN - CROSS - MR. SINGER

393

1 MR. SINGER: The full 806, not 806R. The full 806  
2 towards the back.

3 MS. SAHLI: Starting at Page 10, 22:46.

4 (Audio recording played.)

5 (Audio recording stopped.)

6 Q In fact, Mr. O'Kain, Mr. Goklu told you in relation to  
7 the possible seizure of money by the police that it could take  
8 a year to get it back; is that right?

9 A That's correct.

10 Q And he repeated essentially the same concern to you on a  
11 number of occasions, that he was expressing to you, that's why  
12 he did not want to transact -- do the transactions in  
13 Manhattan and why he was concerned about other people that  
14 might see what the two of you were doing in the car; is that  
15 right?

16 A Yeah, that's correct.

17 Q Okay.

18 A That's part --

19 Q And it was again --

20 A -- of the investigation.

21 Q And I'm not talking about your belief?

22 THE COURT: So you said you're not talking about his  
23 belief. Go on.

24 Q We're talking about the -- these are things that  
25 Mr. Goklu expressed to you as the reasons why he didn't want



O'KAIN - CROSS - MR. SINGER

394

1 to police to see what the two of you were doing in the car?

2 A That's correct.

3 Q All right. And he never said to you, I don't want the  
4 police to see what's going on in the car because I'm concerned  
5 that I'm going to be arrested and get charged with some drug  
6 offense.

7 He never said that to you or anything like that to  
8 you, correct?

9 A No.

10 Q He was concerned about the seizure of the money for  
11 whatever period of time it would take before he was able to  
12 get it back; is that right?

13 A Exactly. He was concerned about the money being seized.

14 Q Seized.

15 A Um-hmm --

16 Q And he never expressed concern that he would not be able  
17 to get it back. It would just take some time to do so, right?

18 A I believe so.

19 Q Now, you indicated that on Tuesday as you were on direct  
20 examination, as you were going through each one of meetings  
21 with Mr. Goklu, that you took opportunities to try to convey  
22 or hint to Mr. Goklu what your business actually was in terms  
23 of your cover story, right?

24 A That's correct.

25 Q And you testified, I believe, that the -- one of the

O'KAIN - CROSS - MR. SINGER

395

1 reasons that you did that was to try to get Mr. Goklu to ask  
2 questions, correct?

3 A That's correct.

4 Q Which would give you an opportunity to more clearly state  
5 what your cover story business was?

6 A And to give the defendant an opportunity to have any sort  
7 of inclination on whether this money was legitimate or  
8 illegitimate.

9 Q And repeatedly, Mr. Goklu simply did not respond; is that  
10 right?

11 A That's correct. It did not seem that he cared one way or  
12 cared.

13 Q Well, again, you're not a mind reader; are you? And what  
14 you're giving us is just your opinion about his reaction.

15 I'm asking specifically, factually, he didn't  
16 respond to these efforts that you were making to raise -- to  
17 get him to raise questions?

18 A No. He didn't respond at all.

19 Q Now, during the meetings, as soon as you would get in the  
20 car with him, the recordings indicated that you immediately  
21 started talking about the money, correct?

22 A Correct.

23 Q And Mr. Goklu would right at the beginning of your  
24 meeting, take out the cash however he had it that day, bundles  
25 tied up, envelopes, whatever it might be, correct?

O'KAIN - CROSS - MR. SINGER

396

1 A Correct.

2 Q And started running the money through the money counting  
3 machine to make sure for both of you that the amount that was  
4 being given to you was correct; is that right?

5 A Correct.

6 Q So the first part of the meeting is making sure that the  
7 cash part was correct, right?

8 A Typically, yes.

9 Q Well, each time?

10 A Yeah.

11 Q Each time you did a transaction, August 28, September  
12 21st, November 27th, December 11th, January 24th, January  
13 30th --

14 THE COURT: Hey. Sorry. Please, you got to listen  
15 to me when I call out to you. You got to go slower for the  
16 court reporter.

17 Shernelle, where did you leave off?

18 MR. SINGER: I'll withdraw it.

19 THE COURT: You're withdrawing it.

20 MR. SINGER: I'll withdraw that and state it again.

21 Q In the six times that you conducted cash for BitCoin  
22 transactions with Mr. Goklu, that's how the meeting started;  
23 is that right?

24 A That's correct.

25 Q All right. And then, I'm excluding the April 30th

O'KAIN - CROSS - MR. SINGER

397

1 because it was not actually an exchange of BitCoin on that  
2 date?

3 A Correct.

4 Q All right. So the meeting starts with Mr. Goklu focusing  
5 on the cash, correct?

6 A Correct.

7 Q Focusing on the exchange rate, right?

8 A Yes.

9 Q How much BitCoin you had to sell that day?

10 A Correct.

11 Q How much cash that would convert into, correct?

12 A Yes.

13 Q And then, what the fee -- his percentage fee would be  
14 seven or eight percent, whatever it was?

15 A Yes.

16 Q To make sure that the cash being provided to you was the  
17 correct amount for the exchange that you were doing, right?

18 A Correct.

19 Q And so, the first part of the meeting, Mr. Goklu, is  
20 focused on that and is engaged in doing that, correct?

21 A Yes.

22 Q And then, you would -- once that was resolved, you would  
23 then initiate a transfer of BitCoin from the wallet in your  
24 phone; is that right?

25 A Correct.

O'KAIN - CROSS - MR. SINGER

398

1 Q And there would be some discussion, and it's in the  
2 recordings, you would discuss the transfer -- how much BitCoin  
3 you were transferring, correct?

4 A Correct.

5 Q And then, you would stay in the car with Mr. Goklu until  
6 that transactions was confirmed, right?

7 A Yes.

8 Q And the confirmation was not on your phone. It was on  
9 Mr. Goklu's phone; is that right?

10 A That's not necessarily correct based on how the BitCoin  
11 blockchain worked. So the confirmations --

12 Q Well, was Mr. Goklu looking at your phone to get  
13 confirmation or was he looking at his own phone to get  
14 confirmation that the BitCoin had been transferred to him?

15 A He was looking at his phone.

16 Q Okay.

17 A But again.

18 Q Well, I'm asking what he was doing. He was looking at  
19 his phone, correct?

20 A That's correct. He was looking at his phone.

21 Q Okay. And again, the -- we're talking about populating  
22 the blockchain and all of that, right? But those are the  
23 electronic steps that had to happen, not in the car, but out  
24 in the ether somewhere until the confirmation would come to  
25 Mr. Goklu; is that right?

O'KAIN - CROSS - MR. SINGER

399

1 A That -- yeah. And -- yes. That's for all intensive  
2 purposes, that's right.

3 Q Okay. And you were not going to leave and he certainly  
4 wanted you to stay in the car until the confirmation was  
5 received, that he had received the BitCoin; is that right?

6 A That's correct. It was a certain number of -- there are  
7 multiple confirmation. And like I mentioned before, the more  
8 confirmations that occur on the blockchain, the more  
9 solidified that transaction is solid and the money is in his  
10 account, so yes.

11 Q So at that point, Mr. -- in each one of the transactions,  
12 Mr. Goklu had given you the cash, right.

13 Q Or it was sitting there for you to take?

14 A Yeah. Exactly.

15 Q That it had been counted out and segregated from any  
16 money he had and it was sitting there in the car for you to  
17 take?

18 A Correct.

19 Q And the meeting that the -- you were not going to take  
20 the cash until Mr. Goklu was satisfied by whatever  
21 confirmations there were, however many there would have been,  
22 you weren't going to leave until Mr. Goklu was satisfied that  
23 the confirmations were sufficient for him?

24 A That's correct.

25 Q Okay. (Continued on the following page.)

O'KAIN - CROSS - MR. SINGER

400

1 CROSS-EXAMINATION (Continued)

2 BY MR. SINGER:

3 Q Okay. And those confirmations, as I asked you a little  
4 bit earlier, could come quickly or they could take some time,  
5 correct?

6 A Correct.

7 Q And during the entire time while you're waiting,  
8 Mr. Goklu is looking at his phone; is that right?

9 A I can't recall specifics about how frequently he looked  
10 at his phone.

11 Q Well, the only place that Mr. Goklu was going to receive  
12 the confirmations that he sought was by information that came  
13 up on his phone; is that right?

14 A Correct.

15 Q And so whether he was staring at it 100 percent of the  
16 time or whether he simply kept going back to it to see what  
17 was going on or to refresh the phone, that's what he was  
18 doing, correct?

19 A Correct.

20 Q And it was during that time that he's waiting for the  
21 confirmations that you are talking to him about your cover  
22 business; is that right?

23 A Correct.

24 Q You said you needed money for California and he didn't  
25 ask any questions about that?

O'KAIN - CROSS - MR. SINGER

401

1 A Correct.

2 Q You said that, you know, the amount of money that -- or  
3 the BitCoin that you'd be able to bring to him was depending  
4 on how much we sell, and he never responded to that?

5 A That's correct.

6 Q You asked him about -- or you spoke on your cell phone  
7 with your supposed partner about keys, correct?

8 A That's correct.

9 Q And Mr. Goklu didn't respond to that in any way?

10 A That's correct.

11 Q What's a key, what are you talking about, does this have  
12 to do with me; he didn't say anything, right?

13 A That's correct. He said nothing.

14 Q And you said that keys refer to cocaine and heroin.

15 That's how cocaine and heroin are sold?

16 A Yes. That's correct.

17 Q Was there ever any discussion with Mr. Goklu about  
18 cocaine or heroin?

19 A No. Outside of me referencing keys, no he did not  
20 reference --

21 Q Well, again, keys are something that someone in the drug  
22 business would be expected to understand; is that right?

23 A That is accurate.

24 Q And someone who's not involved in the drug business would  
25 not necessarily know what the heck you were talking about,



O'KAIN - CROSS - MR. SINGER

402

1 right?

2 A Not necessarily. I think it's pretty common, based on  
3 movies and popular culture.

4 Q So everybody knows that a key refers to cocaine and  
5 heroin?

6 A That a question?

7 Q Is that what you're saying?

8 A Does everyone know? I'm not sure if everyone knows.

9 Q Of course you don't.

10 You made a reference to getting your head chopped  
11 off; he didn't respond?

12 A No.

13 Q You made a reference to not being able to touch Coinbase  
14 and he didn't respond?

15 A Not at all.

16 Q Then on January 24th, you make some reference to oxy?

17 A That's correct.

18 Q And he did respond to that, right?

19 He asked you, what's oxy?

20 He didn't even know what you were talking about; is  
21 that right?

22 A He asked what oxy was.

23 Q He said, what's oxy.

24 That's the specific words that he used to you,  
25 what's oxy, right?

O'KAIN - CROSS - MR. SINGER

403

1 A That's correct.

2 Q And you simply gave him the full name, oxycodone, right?

3 A That's correct.

4 Q He didn't ask any other questions about that, what's  
5 that, what are we talking about?

6 A No.

7 Q No indication that he knew what you were talking about?

8 A He --

9 Q You assumed that everybody should know what you're  
10 talking about, but he never said anything; is that right?

11 A He never asked any questions after I told him that it was  
12 oxycodone.

13 Q That's correct.

14 Now, you testified that on one of your earlier  
15 meetings with Mr. Goklu that Mr. Goklu had said that he had  
16 done a transaction with someone who was selling marijuana; is  
17 that right?

18 A That's correct.

19 Q And that was actually on November 27th of 2018, where  
20 Mr. Goklu raised that, correct?

21 A I believe so, yes.

22 Q And again, that wasn't in response to any hint or  
23 suggestion from you that was trying to bring that information  
24 out of him, this was something that he simply went into on his  
25 own; is that right?

O'KAIN - CROSS - MR. SINGER

404

1 A That's correct.

2 Q And is that all he said, that he was doing a transaction  
3 with somebody selling marijuana?

4 A I don't think that portion was played in court, so I'd  
5 have to get the actual specifics -- I'd have to refresh my  
6 memory.

7 Q Well, why don't we do that.

8 A Sure.

9 Q All right.

10 MR. SINGER: November 27th, Ms. Sahli.

11 MS. SAHIL: Yes, it's Government Exhibit 803, the  
12 full transcript at Page 26, and then to play from timestamp  
13 43:24.

14 THE COURTROOM DEPUTY: 43:24?

15 MS. SAHIL: Yes, 43:24.

16 (Exhibit published.)

17 (Audio recording played.) (Audio recording stopped.)

18 Q So Mr. Goklu, didn't simply reference that someone that  
19 was selling marijuana in California, he said more than that,  
20 didn't he?

21 A Yes.

22 Q In fact, what he said to you -- you had -- you responded  
23 by indicating that you didn't understand what he was saying to  
24 get him -- and he responded to that; is that right?

25 A That's correct.

O'KAIN - CROSS - MR. SINGER

405

1 Q And he said, it's a licensed marijuana thing in  
2 California, right?

3 We just heard it. Did you hear that?

4 Did you hear him say that it's a licensed marijuana  
5 thing?

6 A Yes.

7 Q Okay. And did you hear Mr. Goklu say that it was legal?

8 A He did say that.

9 Q And did you hear Mr. Goklu say that you pay taxes?

10 A Yes.

11 THE COURT: Mr. Singer, just so you know, we'll take  
12 our morning break in about a couple of minutes.

13 MR. SINGER: I will be done in about a couple of  
14 minutes, so the timing will be perfect.

15 THE COURT: Okay. Thank you.

16 Q You responded to Mr. Goklu that marijuana was also part  
17 of your business, didn't you?

18 A Yes.

19 Q And that was immediately after Mr. Goklu referenced what  
20 he stated was a licensed marijuana thing in California that  
21 was legal and pays taxes, and you said that's part of my  
22 business too?

23 A Marijuana was part of my business, that's what I told  
24 him.

25 Q That's what the conversation was about, marijuana.

O'KAIN - CROSS - MR. SINGER

406

1           You said, that's part of my business too, right?

2   A     Correct.

3   Q     And then on April 30th, the day of the arrest, when you  
4   first got into the car, there was -- this was not the seventh  
5   time that you were meeting with him, right?

6   A     Correct.

7   Q     And were certainly more comfortable with each other?

8   A     Yes.

9   Q     And he -- Mr. Goklu begins by asking you, how's business,  
10   right?

11   A     Yes.

12   Q     You told him it was booming?

13   A     Correct.

14   Q     And Mr. Goklu responds, like, you know, hey, I should get  
15   into that, right?

16           If your business is booming, maybe I should get into  
17   that, right?

18   A     Correct.

19   Q     And you answered, oh, you want a cut, you want to get  
20   into it, right?

21   A     Correct.

22   Q     And then the business that he referenced that he wanted  
23   to get into with you was a cannabis farm; is that right?

24           He asked you how much is a cannabis farm?

25   A     That's correct, and that's why I referenced --

O'KAIN - CROSS - MR. SINGER

407

1 Q Sir, you answered my question.

2 When you offered him a cut of the business, what he  
3 indicated to you -- what Mr. Goklu indicated to you was how  
4 much it would cost to buy part of a cannabis farm; isn't that  
5 right?

6 A That's correct.

7 Q Thank you.

8 MR. SINGER: I have nothing else.

9 THE COURT: All right. Thank you.

10 Timing is perfect. Let's take our morning break,  
11 folks. It's 11:15, thereabout. Let's be ready to go at 11:30  
12 or a minute or two after.

13 Have a good break. Keep an open mind. Do not talk  
14 about the case or don't do any research.

15 THE COURTROOM DEPUTY: All rise.

16 (Jury exits the courtroom.)

17 THE COURT: Thank you. You can step down,  
18 Mr. O'Kain.

19 Folks, you have 15 minutes, roughly for a break.

20 (A recess was taken.)

21 (Jury enters the courtroom.)

22 THE COURT: So jurors -- by the way, you can sit.  
23 We stand for you, but you can sit.

24 So welcome back. Have a seat, everyone.

25 Ms. Kassner, your witness for redirect.

O'KAIN - REDIRECT - MS. KASSNER

408

1 MS. KASSNER: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. KASSNER:

4 Q On cross-examination -- excuse me.

5 On cross-examination, defense counsel asked you a  
6 few questions about the drug business.

7 Do you recall that?

8 A Yes. I do.

9 Q Is money laundering part of the drug business?

10 A Yes.

11 Q And in your training and experience, as a former Drug  
12 Enforcement Administration agent, is it possible to run a  
13 successful drug operation without money laundering?

14 A No. Money laundering was typically always part of the  
15 scope of circumstances around drug dealing.

16 Q You were also asked some questions about marijuana.

17 Was marijuana a controlled substance under federal  
18 law in 2018?

19 A Yes, it was.

20 Q Is it still a controlled substance under federal law  
21 today?

22 A It still is.

23 Q Has marijuana ever been legal to distribute in the United  
24 States under federal law?

25 A Not to the best of my knowledge.

O'KAIN - REDIRECT - MS. KASSNER

409

1 Q You were also asked about selling marijuana outside the  
2 State of California.

3 Do you remember that?

4 A Yes.

5 Q And I'd like to refer you to Jury Aid 801 which is the  
6 full transcript, on Page 11. And near the bottom of Page 11,  
7 transcript 801 -- not the one with the R, but the full one at  
8 the back -- you say that you have an online business.

9 Do you recall what you told the defendant about your  
10 business?

11 A At that time, I believe it was just generic, an online  
12 business.

13 Q And if we now turn to page -- transcript of 806. It's a  
14 few tabs over. On Page 13?

15 MR. SINGER: Your Honor, if I may, the jury aids are  
16 not in evidence.

17 THE COURT: I'm sorry, what's not in evidence?

18 MR. SINGER: The jury aids are not in evidence.

19 THE COURT: Right. I'm sorry, so what was the  
20 request, to have the jury just read the transcripts?

21 You do have to play the audio. You can't just have  
22 them read the transcripts.

23 Is that what's being proposed?

24 MR. SINGER: That was my concern, Your Honor.

25 THE COURT: So just play the audio again, because



O'KAIN - REDIRECT - MS. KASSNER

410

1 remember, the transcripts are simply aids to what they hear on  
2 the audio.

3 The audio is the evidence.

4 MS. KASSNER: Yes, Your Honor.

5 For this question, I'm not asking to play the  
6 transcripts. I'm asking what the witness recalls saying to  
7 the defendant based on reviewing the transcript. But I can  
8 also just ask him what he recalls.

9 THE COURT: Ask him what he recalls. If he has a  
10 failure of memory, you can refer him to the transcript. But  
11 he would read it to himself then, and don't refer the jury to  
12 look at it.

13 MS. KASSNER: Okay.

14 Q Mr. O'Kain, what, if anything, did you tell the defendant  
15 about where you sold the product --

16 THE COURT: Mr. O'Kain, close your binder, listen to  
17 the question, do you recall, and then go ahead.

18 Q Mr. O'Kain, do you recall telling the defendant where you  
19 sold the products that your business was selling?

20 A Vaguely. It would help if I could refresh my memory.

21 Q Would it refresh your recollection to look at a  
22 transcript dated January 24, 2019?

23 A Yes.

24 Q Okay. And if you could look at, in your binder, tab 806,  
25 Page 13.

O'KAIN - REDIRECT - MS. KASSNER

411

1 THE COURT: Just read it to yourself, and jurors,  
2 don't open your binders.

3 Go ahead. Just let the AUSA know what you're ready.

4 A Can you please tell me the page number again.

5 Q Page 13.

6 A Okay.

7 Q Did that refresh your recollection as to where you told  
8 the defendant you sold your products?

9 A Yes. I told the defendant that we got our stuff from  
10 California and brought it back here, meaning, New York.

11 Q In your training and experience, do drug dealers usually  
12 write in text messages, I'm selling drugs?

13 A No.

14 Q During your -- and in your training and experience, do  
15 drug dealers typically call drugs, drugs?

16 A No. They typically don't. They call them anything about  
17 the actual name for the drugs.

18 Q During your time as a Drug Enforcement Administration  
19 agent, how many times did you see or hear anybody say, I'm  
20 dealing drugs?

21 A I can't remember any times that that happened.

22 Q And earlier, it was -- there was a discussion of the fact  
23 that you never said, I'm dealing drugs.

24 Why didn't you say that?

25 A Because that would be completely out of character with

O'KAIN - REDIRECT - MS. KASSNER

412

1 somebody that is selling drugs. And as I was operating in an  
2 undercover capacity with a cover story that I was selling  
3 drugs, I hug to the cover story as best I could, and part of  
4 that was not actually stating so bluntly that I'm selling  
5 drugs.

6 Q In January and April of 2019, did you tell the defendant  
7 that you were selling Adderall?

8 A Yes.

9 Q And did you tell the defendant that you were selling  
10 marijuana?

11 A Yes.

12 Q And did you tell you the defendant you were selling  
13 oxycodone?

14 A Yes.

15 Q Now, I want to pull you up the section where you told --

16 MS. KASSNER: So I want to play, if we could, a  
17 portion of the transcript. And this is Government  
18 Exhibit 806. And if we could play 41:35 until 43:30.

19 And this is going to be in the binders, 806, Page  
20 25, in the long version of the transcript. It might go a bit  
21 before and a bit after.

22 A I'm sorry, before that plays, can you give the page  
23 number one more time.

24 Q Yes. It's Page 27 of tab 806, the full tab that has the  
25 page numbers at the bottom. And the recording may start a bit

O'KAIN - REDIRECT - MS. KASSNER

413

1 before this page.

2 (Audio recording played.)

3 MS. KASSNER: If we could pause here.

4 (Audio recording stopped.)

5 Q So earlier there was a discussion about whether or not  
6 the defendant responded when you said that oxies refer to  
7 oxycodone.

8 Did the defendant respond when you said that?

9 A Yes, he did.

10 Q And what did he say?

11 A He said don't bring those expensive things.

12 Q Did he say anything else?

13 A And he said then just bring regular street things.

14 Q After you told the defendant that you sold Adderall,  
15 oxycodone, and marijuana, did the defendant refuse to exchange  
16 your BitCoin?

17 A No.

18 Q Now, I want to turn back to one last thing.

19 Do you recall being asked questions about the  
20 defendant not wanting money to be seized?

21 A Yes.

22 Q Now, earlier, we listened to Government Exhibit 803, and  
23 I believe we stopped at timestamp 28:02.

24 MS. KASSNER: If we could continue playing where we  
25 had left off on cross at 28:02 of Government Exhibit 803.

O'KAIN - REDIRECT - MS. KASSNER

414

1 Q And before we do that, I just want to refer you to the  
2 transcript, tab 830, and it's -- it begins, I believe, on Page  
3 15 of tab 803 in the back of the binder. So this is just  
4 starting where we left off.

5 (Audio recording played.)

6 MS. KASSNER: If we could pause here.

7 (Audio recording stopped.)

8 Q Based on your discussion with the defendant on -- in this  
9 section of the recording which was an November 27th, 2018, do  
10 you have an understanding -- what was your understanding of  
11 why the defendant's partner's money was seized?

12 A My understanding was that his partner's money was seized  
13 because he was effectively laundering drug money and it was  
14 seized because of that.

15 Q And in your training and experience, can you explain --  
16 do you have an understanding of when the police typically  
17 seize money?

18 MR. SINGER: Objection, Your Honor.

19 THE COURT: Sustained.

20 MS. KASSNER: No further questions, Your Honor.

21 Thank you.

22 THE COURT: All right. Mr. Singer.

23 MR. SINGER: Nothing else. Thank you, Judge.

24 THE COURT: All right. Thank you. You may step  
25 down, Mr. O'Kain. Thank you very much. You're excused.

LIEFKE - DIRECT - MS. DIOUF

415

1 (The witness steps down.)

2 THE COURT: Next witness.

3 MS. DIOUF: The Government calls former DEA Special  
4 Agent Allan Liefke.

5 THE COURT: Is it correct that it's also Mr. Liefke;  
6 is that right?

7 MS. DIOUF: Mr. Liefke, yes.

8 (The witness enters the stand.)

9 THE COURT: If you'll remain standing for one minute  
10 so you can be sworn in.

11 (The witness was sworn and/or affirmed in by the  
12 courtroom deputy.)

13 THE WITNESS: I do.

14 THE COURTROOM DEPUTY: Thank you. Have a seat.  
15 Just speak directly into the microphone.

16 Please state and spell your name, for the record.

17 THE WITNESS: Allan Liefke, A-L-L-A-N, L-I-E-F-K-E.

18 THE COURT: All right. You may inquire.

19 **ALLAN LIEFKE**, called as a witness, having been first duly  
20 sworn/affirmed, was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 BY MS. DIOUF:

24 Q Good morning, Mr. Liefke.

25 Can you see me in the back here?

LIEFKE - DIRECT - MS. DIOUF

416

1 A Yes.

2 Q Where were you employed in July 2018?

3 A July 2018, I was employed at the DEA or Drug Enforcement  
4 Administration.

5 Q What does the DEA do?

6 A They investigate violations of the United States Drug  
7 Laws and also money laundering with respect to drug  
8 trafficking.

9 Q And what was your title at the DEA?

10 A I was a special agent at the DEA.

11 Q And how long were you a special agent at the DEA?

12 A I was a -- for approximately 13 years, I was a special  
13 agent. I started my career in March of 2009, and I left in  
14 this past June.

15 THE COURT: Mr. Liefke, could we have you pull the  
16 microphone closer to you.

17 THE WITNESS: Sure.

18 THE COURT: Good. Thanks.

19 THE WITNESS: You're welcome.

20 Q What does a special agent at the DEA do?

21 A A special agent, basically they run cases. So they'll do  
22 different things, like, surveillance, you know, write  
23 affidavits. They're basically in charge of cases.

24 Q And in July 2018, were you partnered with anyone at the  
25 DEA?

LIEFKE - DIRECT - MS. DIOUF

417

1 A Yes. My partner at the time was Special Agent Patrick  
2 O'Kain.

3 Q And did you and Mr. O'Kain focus your investigations on  
4 any particular area?

5 A Yes. We were focused mainly on cyber investigations to  
6 include dark web investigations and also investigations  
7 involving cryptocurrency.

8 MR. SINGER: Objection, Your Honor.

9 THE COURT: Did you say something?

10 MR. SINGER: Objection.

11 THE COURT: Overruled.

12 Q And Mr. Liefke, I'll remind you to speak slowly for the  
13 court reporter, please.

14 A Okay.

15 Q Prior to becoming a DEA special agent, did you have any  
16 other law enforcement jobs?

17 A Prior to the DEA, I worked at the New York City Police  
18 Department Crime Laboratory where initially I was in the  
19 Controlled Substances Analysis Section where I would analyze  
20 drug evidence, and then after that, I was assigned to the  
21 Trace Evidence Section where my specialty was paint analysis.

22 Q And can you describe your educational background prior to  
23 working at the NYPD crime laboratory?

24 A Yes. I have a bachelor's degree in forensic science from  
25 John Jay College, and a master's degree in forensic drug



LIEFKE - DIRECT - MS. DIOUF

418

1 chemistry from the University of Florida.

2 Q Mr. Liefke, are you familiar with digital currency?

3 A Yes, I am.

4 Q How are you familiar with it?

5 A Like I said, our investigations that myself and Special  
6 Agent O'Kain were doing centered around cryptocurrencies, and  
7 currently, my job that I'm at now, that's my specialty, as  
8 well.

9 Q What is digital currency?

10 A It's a currency that takes place on a decentralized  
11 network. It's a peer-to-peer network, so it's not like a  
12 bank. It's interconnected computers.

13 Q And you mentioned cryptocurrency.

14 Is digital currency also known as cryptocurrency?

15 A Yes. They're synonyms.

16 Q Can you give some examples of digital currency, please?

17 A The main ones that people know about is BitCoin, and then  
18 there's different ones as well like Ethereum or Monero.

19 Q Is BitCoin also known as BTC?

20 A Yes, that's the abbreviation for BitCoin.

21 Q And through your role as a special agent at the DEA, did  
22 you also work on investigations involving digital currency?

23 A Yes, we did.

24 Q And what sorts of investigations were those?

25 A Those involved, you know, things pertaining to the dark

LIEFKE - DIRECT - MS. DIOUF

419

1 web where we'd have to pay --

2 MR. SINGER: Objection.

3 THE COURT: Sustained.

4 Let's have a sidebar really quickly.

5 (Continued on the next page.)

6 (Sidebar conference.)

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SIDEBAR CONFERENCE

420

1 (The following occurred at sidebar.)

2 THE COURT: So I presume everyone remembers as part  
3 of the pretrial motions, there weren't supposed to be any  
4 references to the dark web, so I'm going to give a curative  
5 instruction to say that the jury should disregard any  
6 references to the dark web which is completely irrelevant to  
7 this case.

8 So just be very careful not to ask him, maybe, these  
9 open-ended questions and guide him a little bit more.

10 MS. DIOUF: I'm happy to lead him more through the  
11 section.

12 THE COURT: Yeah, I'll give you a little leeway so  
13 we could avoid this, if possible.

14 MR. SINGER: Wasn't he directed not to raise this?

15 THE COURT: Let's not get into that. It doesn't  
16 matter. It's really quite a de minimis harm, but I will cure  
17 it by simply saying just disregard it. You just try to keep  
18 him away from that topic.

19 Hopefully, once he hears my instruction, he'll get  
20 the hint.

21 (End of sidebar conference.)

22 (Continued on the next page.)

23

24

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LIEFKE - DIRECT - MS. DIOUF

421

1 (In open court; Jury present.)

2 THE COURT: So ladies and gentlemen, I just want to  
3 give you an instruction that you should disregard any  
4 references to the dark web. That has no relevance at all to  
5 this case and which is partly the reason I wanted to have this  
6 quick sidebar. So disregard any references you hear to the  
7 dark web. Not relevant to this case.

8 You may proceed Ms. Diouf.

9 BY MS. DIOUF:

10 Q Mr. Liefke, are you familiar with an investigation into  
11 an individual named Mustafa Goklu?

12 A Yes, I am.

13 Q And how are you familiar with that investigation?

14 A Myself and Patrick O'Kain were the case agents on that  
15 investigation.

16 THE COURT: I'm going to ask you to both go a little  
17 slower.

18 Q And what does the case agent do?

19 A The case agent is responsible for running the case,  
20 telling other agents when to do surveillance, when to, you  
21 know, write different affidavits. Basically, in charge of  
22 running the case from the beginning to the end.

23 Q Mr. Liefke, do you see Mustafa Goklu in the courtroom  
24 today?

25 A Yes, I do.

LIEFKE - DIRECT - MS. DIOUF

422

1 MS. DIOUF: And with your permission, Your Honor,  
2 I'd ask that everyone at defense table remove their mask,  
3 please.

4 THE COURT: Yes.

5 Q Mr. Liefke, can you please identify Mr. Mustafa Goklu by  
6 where he is sitting and an item of clothing he's wearing?

7 A Yes. He's sitting on the far right table and he's  
8 wearing a red tie.

9 THE COURT: Let the witness reflect that the witness  
10 has identified the defendant, Mr. Goklu.

11 MS. DIOUF: Thank you, Your Honor.

12 Q Do you know Mustafa Goklu by any other names or aliases?

13 A Yes. He also goes by Michael Goklu and Mustangy.

14 Q How did your investigation into the defendant begin?

15 A We -- myself and Patrick -- Special Agent O'Kain was  
16 looking on a website called localbitcoins.com and it's a  
17 peer-to-peer website where people can look for other people  
18 that are exchanging BitCoin for cash or cash for BitCoin.

19 Q And when was this, approximately?

20 A This was in July of 2018.

21 Q And did the defendant have a profile on local BitCoins in  
22 July of 2018?

23 A Yes. The defendant had a profile on localbitcoins.com  
24 under the name Mustangy.

25 Q And did this profile tell you how to contact Mustangy?

LIEFKE - DIRECT - MS. DIOUF

423

1 A Yes. On the profile, it said to contact him through  
2 Signal Messaging app.

3 Q What is Signal?

4 A Signal is an encrypted messaging app.

5 Q Have you used Signal before?

6 A Yes, I have.

7 Q And you said it's encrypted.

8 What does that mean?

9 A That means the communications between both parties are  
10 encrypted. So even if a Government agency had a wiretap, they  
11 wouldn't be able to read those messages because they're  
12 encrypted.

13 Q Did you contact the defendant on Signal?

14 A Yes, we contacted the defendant on Signal.

15 Q And when you say, "we," who are you referring to?

16 A Myself and Special Agent O'Kain.

17 Q And what happened next?

18 A After some negotiations, eventually, a meeting was set up  
19 in order to exchange BitCoin for cash.

20 Q And what was your role in that meeting?

21 A So during the meeting where Special Agent O'Kain met with  
22 the defendants, I was there, as well, performing surveillance  
23 and also providing safety cover for the undercover.

24 Q And was then Special Agent O'Kain acting in an undercover  
25 capacity?

LIEFKE - DIRECT - MS. DIOUF

424

1 A Yes, he was.

2 Q Have you been involved in undercover operations before?

3 A Yes, I have.

4 Q What is the role of a surveillance agent in an undercover  
5 operation?

6 A Again, the role of a surveillance agent is to monitor the  
7 meeting to see what takes place and also to provide security  
8 for the undercover.

9 Q Did you surveil the undercover meetings in this case?

10 A Yes, all the meetings that the UC was present at was  
11 surveiled.

12 Q And did you do any other surveillance of the defendant in  
13 this investigation?

14 A Yes. There are other times where the UC wasn't involved  
15 where we did surveillance on the defendant.

16 Q And when you say, "UC," are you referring to the  
17 undercover?

18 A Yes, I am.

19 Q And can you describe that surveillance of the defendant  
20 when the undercover wasn't involved?

21 A So there was times where we would set up at the  
22 defendant's residence and then follow his comings and goings  
23 throughout the day to see who he was meeting up and what he  
24 was doing.

25 Q Did you observe the defendant meet with people other than

LIEFKE - DIRECT - MS. DIOUF

425

1 the undercover during this surveillance?

2 A Yes, we did.

3 Q And can you describe that?

4 A In January of 2019, we observed the defendant meet up  
5 with a female in Manhattan. The female had what looked to be  
6 a weighted bag that we thought she was carrying a large amount  
7 of U.S. currency. And at this same time, the undercover,  
8 Special Agent O'Kain was also in communication with the  
9 defendant.

10 We had a meeting set for the next day that was  
11 supposed to be for \$100,000, and after the defendant met up  
12 with this female, he advised the undercover agent that he had  
13 \$25,000 to do a deal the next day.

14 Q Did there come a time when you personally interacted with  
15 the defendant?

16 A Yes, there was.

17 Q And when was that?

18 A After his arrest in April of 2019, I was able to  
19 interview the defendant.

20 Q And what happened to the undercover agent during this  
21 arrest?

22 A During the arrest, we also arrested the undercover agent  
23 so that the defendant didn't know he was working for the  
24 Government at the time.

25 Q Where did you interview the defendant?



LIEFKE - DIRECT - MS. DIOUF

426

1 A After we arrested the defendant, we took him back to his  
2 residence and interviewed him in his dining room.

3 Q And when you interviewed the defendant, did you inform  
4 him that the person he was arrested with was a law enforcement  
5 officer?

6 A Initially, we did not advise the defendant that the  
7 person he was arrested with was an undercover agent, no.

8 Q Did you ask the defendant whether he had done BitCoin  
9 exchanges with other people during this interview?

10 A I did. He said he did it on a few other occasions.

11 Q And did you ask about any particular customers?

12 A Yes. I asked about the female that we observed him meet  
13 up with in January of 2019.

14 Q And how did the defendant respond?

15 A Initially, he said he did not remember meeting up with  
16 the female. I then showed him a picture to try and jog his  
17 memory, and at that time, he stated he did a small deal with  
18 her for approximately 2- to \$3,000.

19 Q And did you ask the defendant what his typical  
20 transaction amount was for?

21 A Yes. He said he usually only did a few thousand dollars,  
22 smaller amounts.

23 Q And did you ask the defendant how he communicated with  
24 potential buyers and sellers of cryptocurrency?

25 A Yes. He said he did it through Signal Messaging app and

LIEFKE - DIRECT - MS. DIOUF

427

1 also WhatsApp.

2 Q Mr. Liefke, did there come a time when you reviewed the  
3 defendant's phone?

4 A Yes. After he was arrested, we had also obtained a  
5 search warrant that gave us permission to search his house and  
6 also his electronic devices.

7 MS. DIOUF: And I want to show you now what's in  
8 evidence as Government Exhibit 228 and also publish to the  
9 jury, with permission.

10 THE COURT: All right. You may do so.

11 Was this previously admitted, Fida?

12 THE COURTROOM DEPUTY: Yes.

13 THE COURT: Okay. All right.

14 Q Mr. Liefke, what is this exhibit?

15 A This is a download of the Signal messaging app messages  
16 from the defendant's phone.

17 Q Did you review the messages contained in this exhibit?

18 A Yes, I did.

19 Q And can you describe them, generally?

20 A It was approximately 53 separate messages, messages  
21 threads with different people. It was just, you know, a bunch  
22 of threads talking about meeting up and exchanging BitCoin for  
23 cash.

24 Q Did you review any messages in this exhibit on Government  
25 Exhibit 228 where the person the defendant was communicating

LIEFKE - DIRECT - MS. DIOUF

428

1 with referenced the defendant's localbitcoins ad?

2 A Yes, I did.

3 Q I'd like to direct your attention to Page 50 in this  
4 exhibit, and this is message thread 15.

5 Mr. Liefke, what is this?

6 A This is a message between defendant and someone else  
7 asking if he had any BitCoin for cash to sell and that he saw  
8 his posting on localbitcoins.com.

9 Q And is this one of the message threads you viewed  
10 pursuant to a search warrant?

11 A Yes, it was.

12 Q And which text bubbles here belong to the defendant?

13 A The bubbles on the right-hand side.

14 Q And can you read the first message on the left-hand side  
15 starting with, hi.

16 And I'll read the defendant's response.

17 A Hi. I'm looking to sell BTC for cash. Saw your post on  
18 local BitCoins.

19 Q Hi. How much.

20 A Depends on the rate, but would like to do .5 to 1 BTC.

21 Q Percent eight Coinbase.

22 Mr. Liefke, directing your attention now to Page 66  
23 of this exhibit which is message thread 21.

24 What's the date on this exchange?

25 A April 17, 2019.

LIEFKE - DIRECT - MS. DIOUF

429

1 Q And can you read the message the customer sends starting  
2 with, hello.

3 A Hello. I'm a buyer of BTC. Do I fill out the form  
4 online through localbitcoins first.

5 Q Directing your attention now to Page 228 in this exhibit,  
6 Government Exhibit 228. And this is message thread 54.

7 What's the date on this exchange?

8 A October 13, 2018.

9 Q And can you read the customer message, and I'll read the  
10 defendant.

11 A Hey, I saw your ad on localbitcoins. I'm looking to buy  
12 about \$2,000 worth in BitCoin or BitCoin cash. I was  
13 wondering what your fees were.

14 Q Please check price at localbitcoin page.

15 Mr. Liefke, were these just some of message threads  
16 you reviewed in this exhibit where the customer or defendant  
17 mentions his localbitcoins page?

18 A Yes. It's just a select few.

19 Q Did you review any messages in this exhibit that appear  
20 to reference prior transactions with the defendant?

21 A Yes, there were a number of those.

22 Q And directing your attention in this exhibit, Government  
23 Exhibit 228, Page 67, which is message thread 22.

24 Mr. Liefke, how many pages long is this message  
25 thread?

LIEFKE - DIRECT - MS. DIOUF

430

1 A Twenty-six pages.

2 Q And can you start reading as the customer at the top and  
3 I'll read the defendant.

4 A Hey, what's good, William. Looking for the BTC.

5 Q Where?

6 A What's good homie.

7 Q And Starbucks. 46/09 Queens Boulevard Sunnyside, New  
8 York.

9 And can you skip ahead to the response.

10 A I'm headed there now. I'll be there at 8:57.

11 Q Okay.

12 And what does the customer say?

13 A I'm here.

14 Q Mr. Liefke, are you familiar with the Starbucks on Queens  
15 Boulevard the defendant references?

16 A Yes. This was also the location that Undercover Agent  
17 O'Kain did a deal with the defendant at, as well.

18 Q And turning to the next page of this thread which is Page  
19 68 in this exhibit.

20 The defendant says, we're inside. Come to front  
21 door.

22 A Grabbing my coffee quick. Way.

23 Q Okay.

24 A I'm right in front.

25 Q And what does the customer next say after December 25,

LIEFKE - DIRECT - MS. DIOUF

431

1 2018?

2 A Hey what's up homey.

3 Q How much?

4 A Not sure. I just wanted to reach out. I'll be in the  
5 city Friday or Saturday.

6 Q Turning to the next page in this thread which is Page 69  
7 of this exhibit.

8 Can you start reading as the customer at the top?

9 A Will you able to meet in Friday.

10 Q Yes. Text before heading.

11 A I'll be in the city at 3:00 p.m. tomorrow. Where do you  
12 want to meet? I'm guessing we could meet around four or five.  
13 Will that work.

14 Q Sorry. Cleared texted. How much and buying or selling?

15 A Buying, 15 or 16,000.

16 Q Same place. Sunnyside Starbucks.

17 And skipping ahead to Page 6 in this thread which is  
18 page 72 of this exhibit.

19 The defendant says, when I text you, go anywhere  
20 Upper East Side, I'm going Manhattan.

21 Can you read the customer starting with, I'm not too  
22 familiar.

23 A I'm not too familiar with Upper East Side. Can you give  
24 me a place to meet so I can be in the right area.

25 Q And can you read the last thing the customer says on this

LIEFKE - DIRECT - MS. DIOUF

432

1 page?

2 A I'm going to the Starbucks on Lexington Avenue.

3 Q And turning to the next page, page seven of this thread  
4 and Page 73 in this exhibit.

5 Can you start reading the customer message starting  
6 with, cool.

7 A Cool. I'm here.

8 Q Five min.

9 A Okay. I'm going to use the bathroom quick.

10 Q Go ahead. Here at corner.

11 And then turning to the next page of this thread  
12 which is Page 74 in this exhibit.

13 Can you start reading as the customer at the top?

14 A Hey what's up homey. Was looking to take a trip down to  
15 see you on Saturday. I'm buying some BitCoin, around 10 15  
16 USD worth.

17 Q And the said BitCoin, but the text says BTC.

18 Is that the also Bitcoin?

19 A Yes. That's correct.

20 Q And the defendant says, okay. Text me.

21 What does the customer say next?

22 A Hey what's up man?

23 Q Hi. I'm at Queens if are you driving it is easier to  
24 you?

25 A I'll be in Queens. Can meet -- can you meet me around

LIEFKE - DIRECT - MS. DIOUF

433

1 eight. I have to go there any way. That's perfect.

2 Q Skipping ahead to Page 10 of this thread which is Page 76  
3 in this exhibit.

4 The defendant says, on the way?

5 How does the customer respond?

6 A Yeah, I'm already in Queens in Ridgewood.

7 Q Give me an ETA when heading Starbucks at.

8 And he provides the address at 46-09 Queens  
9 Boulevard.

10 And moving to the next page, Page 11 of the same  
11 thread and Page 77 in this exhibit.

12 Can you read the customer starting with, I'm here,  
13 in the middle of the page.

14 A I'm here. Just ordering a coffee and using the bathroom.  
15 I got a spot right out in front.

16 Q Okay. In front, says the defendant.

17 A Okay. Cool. Be right out.

18

19 (Continued on the following page.)

20

21

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25



Liefke - direct - Diouf

434

1 BY MS. DIOUF: (Continuing.)

2 Q And moving to the next page, page 12 of this thread which  
3 is page 78 in this exhibit, can you start reading as the  
4 customer at the top?

5 A "Hey. What's up Homie?"

6 Q "How much you want \$\$\$ or how BTC you have," says the  
7 defendant?

8 A "I'm going to bring around 60K. Just had a huge music  
9 event and want to buy more BTC."

10 Q "You are a seller, right? Sorry, I delete history for  
11 effect reasons. How many BTC you have?

12 A "No, I'm to buy BTC again. You should remember me. We  
13 met a couple of times now, Starbucks."

14 Q And the defendant says, "How many BTC you want?"

15 And then skipping ahead to page 24 of this thread  
16 which is page 90 of this exhibit, can you read as the customer  
17 starting at the top?

18 A "Where?"

19 Q And the defendant replies, "Starbucks, 4609 Queens  
20 Boulevard, Sunnyside, New York. How far to here?"

21 What does the customer say?

22 A "45 minutes, tops. I should be there by 9:55. I'm  
23 getting to my Lyft now."

24 Q "Okay."

25 A "I'm here getting a coffee."

Liefke - direct - Diouf

435

1 Q "Okay, come out when have coffee."

2 Switching now to a different thread in this exhibit,  
3 message thread two on page 23 of this exhibit, Mr. Liefke  
4 what's the date at the top of this page?

5 A July 29, 2018.

6 Q And can you start reading as the customer at the top?

7 A "Hey, can you do 65K? Seller here."

8 Q And I'll read the defendant. "Yes, I can. Sorry, just  
9 saw MSG."

10 A "You've dealt for 20K, Asian guy with glasses. I'll let  
11 you know when I need it."

12 Q "Okay."

13 A "I'm still thinking RN. I will let you know by  
14 tomorrow."

15 Q "Okay."

16 Mr. Liefke, when you interviewed the defendant, what  
17 did he say the typical size of his transactions were?

18 A Between one and \$5,000.

19 Q Mr. Liefke, were these only some of the message threads  
20 you reviewed in this exhibit where the defendant talked about  
21 meeting customers more than once?

22 A Yes.

23 Q And you mentioned earlier that the defendant told you  
24 when you interviewed him that he only did small transactions  
25 around a few thousand dollars. In addition to the

Liefke - direct - Diouf

436

1 conversations with Signal user William, which we reviewed, did  
2 you come across other Signal conversations where the defendant  
3 discussed amounts larger than a few thousand dollars?

4 A Yes, there were multiple messages discussing amounts  
5 larger than \$5,000.

6 Q And directing your attention to page 237 of this exhibit  
7 which is message thread 58, can you start reading as the  
8 customer starting with, "Your price"?

9 A "Your price does not suit us."

10 Q "This is high VOL man. Not one BTC. If you get 50K,  
11 then we talk. 20K 7, 50K 6."

12 Mr. Liefke -- withdrawn.

13 Mr. Liefke was this only one of the message threads  
14 in this exhibit you reviewed where the defendant and customer  
15 talked about exchanging more than a few thousand dollars?

16 A Yes, that is correct.

17 Q Did you review messages where the defendant mentioned the  
18 NYPD or New York City Police Department?

19 A Yes, there was mention of NYPD.

20 Q And directing your attention to page 96 in this exhibit  
21 which is message thread 23, how many pages long is this  
22 thread?

23 A Eight pages.

24 Q And what page are we on?

25 A Page four.

Liefke - direct - Diouf

437

1 Q Can you start reading the customer starting with "meet  
2 me" and I'll read the defendant?

3 A "Meet me inside Starbucks, please."

4 Q "No, bye."

5 A "Dot dot dot."

6 Q "I'm not going to count money in Starbucks, sorry."

7 Moving to the next page, page five on this thread,  
8 and page 97 in this exhibit, can you read the customer's  
9 response starting with "Why not."

10 A "Why not? I'm sitting at a corner table. That's the  
11 whole point of meeting somewhere public. It's safe for both  
12 parties."

13 Q "Two MIN you COMR, or I leave. Sorry, not risking for  
14 2K."

15 A "There's no risk for you to come inside. There is a risk  
16 for me to get in your car."

17 Q "I am double-parked. Okay, bye, man, good luck."

18 And skipping to page seven of this thread which is  
19 page 99 in this exhibit, can you start reading the customer at  
20 the top.

21 A "I don't know if you're going to pull out a weapon and  
22 threaten me after I made the transaction. That's why meet at  
23 public places. You are acting shady AF."

24 Q And the defendant says, "Middle of street in crowd,  
25 question mark."

Liefke - direct - Diouf

438

1 A "You're a joke."

2 Q "Dude, sorry, try ATMs. As I said, I did many trades.  
3 First time cancelled. Really are you worked for NYOD or  
4 what?"

5 Mr. Liefke, what is your understanding of what AF  
6 typically means?

7 A As fuck.

8 Q And does NYOD appear to be a typo for NYPD?

9 A Yes, it does.

10 Q Mr. Liefke, are these only some of the messages you  
11 reviewed in this exhibit where the defendant talks about the  
12 police?

13 A Yes, that is correct.

14 Q During your investigation did the defendant make any  
15 statements to the undercover agent about the police?

16 A Yes, he did. He said he didn't like to go into Manhattan  
17 to do video --

18 MR. SINGER: I object to this. He was not present  
19 for the conversation. We've already --

20 THE COURT: Overruled. Why don't you just establish  
21 that this was made to him and are you going to be using the  
22 overhead again? I'm wondering about the lights.

23 MS. DIOUF: Yes, I have a few more to go.

24 THE COURT: Okay, go ahead.

25 Q Mr. Liefke, did you listen to the conversations between

Liefke - direct - Diouf

439

1 the undercover and the defendant?

2 A Yes. So while the deals were being made I was listening  
3 in real time and also I reviewed the recordings afterwards as  
4 well.

5 Q And what statements, if any, did the defendant make to  
6 the undercover about the police?

7 MR. SINGER: Your Honor, I object to this.

8 THE COURT: Overruled.

9 A One of the reasons the defendant did not like to go to  
10 Manhattan is he said that there was lots of NYPD in Manhattan  
11 and also lots of different surveillance cameras that the NYPD  
12 uses. Also he mentioned that the NYPD likes to dress their  
13 officers as bums so you don't know they're officers and they  
14 walk around to do surveillance like that.

15 Q Mr. Liefke, did you review any messages in this Exhibit  
16 228, Government Exhibit 228, where the defendant expressed  
17 opinions about doing business in Manhattan?

18 A Yes, I did.

19 Q Directing your attention to page 242 of Government  
20 Exhibit 228 and this is message thread 60. Mr. Liefke, how  
21 many pages long is this thread?

22 A 13 pages.

23 Q And starting with the customer at the top, can you start  
24 reading and I'll read as the defendant?

25 A "Hey Mustang, wanted to trade coin for 1160 cash."

Liefke - direct - Diouf

440

1 Q "Hey Trade, what you are buying BTC or seller?"

2 A "Looking to sell BTC."

3 Q "Okay. I can do at Starbucks 47 S Street and Queens  
4 Boulevard."

5 A "Can you do somewhere in Manhattan by any chance?"

6 Q "No, sorry. Manhattan sucks, LOL."

7 A "LOL, what makes it suck?"

8 Q Turning to the next page, page 243 in this exhibit, the  
9 defendant replies, "Traffic, safety, et cetera, hard to meet."  
10 And how does the customer respond?

11 A "You can only do Queens or you'll do Brooklyn too?"

12 Q "If you coming from Jersey, Queens is easier, George  
13 Washington Bridge to Triboro. I am Brooklyn, but going  
14 Queens."

15 A "I mean solo right now. Was going to head to Brooklyn  
16 around Prospect Avenue stop."

17 Q And skipping ahead to page eight of the same thread, page  
18 249 of this exhibit, can you read the customer starting with  
19 "think we can meet" in the middle of the page?

20 A "Think we can meet downtown somewhere?"

21 Q And the defendant says, "No, sorry, Manhattan at all."

22 Mr. Liefke was this only one of the messages in this  
23 thread where the defendant expressed an opinion about doing  
24 business in Manhattan?

25 A Yes, it was.

Liefke - direct - Diouf

441

1 Q Did you review any message threads where someone mentions  
2 washing money?

3 A Yes.

4 Q Based on your training and experience, what do you  
5 understand "wash to" typically mean with respect to money?

6 A Washing money is -- it's another term for money  
7 laundering or they're trying to hide or obfuscate the origin  
8 of the funds.

9 Q And directing your attention to message thread one in  
10 Government Exhibit 228 which is page 12 in this exhibit, is  
11 this another message you reviewed pursuant to the search  
12 warrant?

13 A Yes, it was.

14 Q What is the date at the top of this thread?

15 A April 26, 2019.

16 Q And how many pages long is this thread?

17 A 12 pages.

18 Q Can you read the customer starting with "Hi"?

19 A "Hi. Trying to buy BTC, ready now. 10 percent over  
20 spot? Asking 3,600 for 3,960."

21 Q And the defendant says, "Hi, can meet tomorrow afternoon  
22 on Queens Boulevard and 47 Street Starbucks."

23 And turning now to the next page, page 13 in this  
24 exhibit, can you start reading as the customer at the top?

25 A "Can we move this conversation to Telegram? I will text



Liefke - direct - Diouf

442

1 you exactly two only BC I am late on this transaction. Sorry  
2 to put a rush on you."

3 Q The defendant says, "Okay. Michi 340634, Telegram."

4 A "Thanks. You rock. Wait, you're the same person who  
5 blew me off today."

6 Q "Question mark, what do you mean?"

7 Mr. Liefke are you familiar with Telegram?

8 A Yes. Telegram is another encrypted messaging app.

9 Q Skipping ahead to page 10 of the thread, page 20 of the  
10 exhibit, can you read the customer at the top?

11 A "Yes, yeah, sure. Asshole for calling out, for wasting  
12 my time for catching you in a lie."

13 Q And the defendant says, "Go ahead. What's wrong with  
14 you? I'll report you to NYPD."

15 A "And when I approached you, you cry like a bitch. Dude,  
16 you are a liar, liar. Your IP even matches the Telegram."

17 Q And the defendant says, "As I am contacted by NYPD to  
18 mark drug dealers, you will be reported, son of a bitch."

19 Mr. Liefke, when you interviewed the defendant did  
20 he tell you that the NYPD asked him to report drug dealers?

21 A No, he did not.

22 Q Did he try to report any drug dealers to you?

23 A Not that I'm aware of.

24 Q And turning to the next page, page 21 in this exhibit,  
25 can you start reading as the customer starting at the top?

Liefke - direct - Diouf

443

1 A "Good luck with your scams. Yeah, yeah, sure, good luck  
2 good luck. You don't have my name. All you have is a burner  
3 cellphone number. Ha ha."

4 Q Mr. Liefke, based on your training and experience are you  
5 familiar with burner cellphone numbers?

6 A Yes, burner cellphone numbers are just numbers that  
7 people get through various places like Metro PCS or they don't  
8 require you to actually give a real name for you to get a  
9 phone.

10 Q And turning to the next page, page 22 of this exhibit,  
11 can you start reading the customer starting with, "This is why  
12 I split."

13 A "This is why I split my transactions, you fool. I did  
14 eight transactions all over 3,000 and still got to wash  
15 another 29K, lame liar. Only a matter of time before you  
16 snitch on the wrong person and get killed."

17 Q And can you remind us of what your understanding of what  
18 washing means with respect to money?

19 A Washing with respect to money is the process of money  
20 laundering where you're trying to hide the origin of the funds  
21 that you have.

22 MS. DIOUF: Thank you. You can take this down now.

23 BY MS. DIOUF:

24 Q Mr. Liefke, did you review any other of the defendant's  
25 electronics recovered during the search?

Liefke - direct - Diouf

444

1 A Yes, I also reviewed a computer that belonged to him.

2 Q And can you describe generally what you found in the  
3 computer?

4 A There was different things related to Bitcoins, different  
5 shipping labels and some banking documents as well.

6 Q I want to show you what's in evidence as Government  
7 Exhibit 753.

8 (Exhibit published.)

9 MS. DIOUF: And publish to the jury with permission,  
10 please.

11 THE COURT: You may, go ahead.

12 BY MS. DIOUF:

13 Q Mr. Liefke, can you see this document?

14 A Yes.

15 Q What is it?

16 A It's a TD Bank statement for a business checking account  
17 under the name Mustangy Corp. USA.

18 Q And are you familiar with Mustangy Corp. during --

19 Did become familiar with Mustangy Corp. during the  
20 course of your investigation?

21 A Yes. This was a corporation that the defendant started.

22 Q And what is the address under Mustangy Corp. USA?

23 A It's 5030 39th Street, second floor, Sunnyside, New York.  
24 This is also the residence where the defendant was living.

25 Q I want to show you what's in evidence and publish to the

Liefke - direct - Diouf

445

1 jury Government Exhibit 754?

2 (Exhibit published.)

3 A This is also a TD Bank statement for a convenience  
4 checking account under the name Michael Goklu at that same  
5 address.

6 Q And showing you now what's in evidence as Government  
7 Exhibit 711 and 712 and hopefully we can pull these upside by  
8 side.

9 THE COURT: Previously admitted.

10 MS. DIOUF: Previously admitted.

11 (Exhibit published.)

12 BY MS. DIOUF:

13 Q Mr. Liefke, can you see these documents?

14 A Yes.

15 Q What are these?

16 A These are shipping labels that were sent from Mustangy  
17 Corp. at that same address in Sunnyside.

18 Q And showing you now what's in evidence as Government  
19 Exhibit 716 and 718, previously admitted.

20 (Exhibit published.)

21 Q And what are these?

22 A Again, these are more shipping labels with the return  
23 address of Mustangy Corp. at the Sunnyside address.

24 MS. DIOUF: Thank you. You can take those down now.

25 Switching gears a bit, at this time the Government

Liefke - direct - Diouf

446

1 would like to offer Government Exhibit 104 into evidence under  
2 Federal Rule of Evidence 902-4.

3 THE COURT: Any objection?

4 MR. SINGER: Can I see what it is?

5 THE COURTROOM DEPUTY: You don't have a copy?

6 MR. SINGER: No objection.

7 THE COURT: 104 is admitted pursuant to Rule 902  
8 certified as a business record.

9 MS. DIOUF: Permission to publish both to the jury  
10 and the witness.

11 THE COURT: You may.

12 (Government Exhibit 104 received in evidence.)

13 (Exhibit published.)

14 Q And this is page two of the exhibit. Mr. Liefke what is  
15 this document?

16 A This is a certificate of incorporation for Mustangy Corp.  
17 USA that was issued by New York State.

18 Q And if you can look at the bottom of the page, what name  
19 do you see there?

20 A Mustafa Goklu.

21 Q And --

22 MS. DIOUF: Just a moment, please, Your Honor.

23 THE COURT: All right.

24 (Pause in proceedings.)

25 MS. DIOUF: Nothing further.

Liefke - cross - Singer

447

1 THE COURT: All right, thank you very much.

2 Your witness, Mr. Singer.

3 CROSS-EXAMINATION

4 BY MR. SINGER:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q Now, you referenced Signal messages that you indicated  
8 had been downloaded from Mr. Goklu's phone?

9 A Correct.

10 Q All right. In fact, they were not able to download them  
11 but there was a series of photographs taken of each of the  
12 messages; correct?

13 A It was sent to our digital evidence laboratory and that's  
14 what they produced to us.

15 Q Okay. So 228 is what was produced to you from the  
16 technicians that were getting information off of the phone?

17 A Correct.

18 Q Okay. Now, you indicated that you had obtained a search  
19 warrant for Mr. Goklu and for his home?

20 A That is correct.

21 Q And you executed that search warrant on April 30, 2019  
22 shortly after Mr. Goklu's arrest; correct?

23 A Yes.

24 Q And at the time of the interview -- withdrawn.

25 You indicated that you interviewed Mr. Goklu in his

Liefke - cross - Singer

448

1 dining room I think you said.

2 A Yes.

3 Q At his home?

4 A Correct.

5 Q So he was taken into custody by various agents including  
6 you; correct? You were part of the arrest team?

7 A I was, yes.

8 Q So Mr. Goklu was taken into custody and at some point was  
9 taken back to his residence; correct?

10 A Yes.

11 Q And when he was back in the residence, was the search  
12 already underway?

13 A Yes, he started the search, yes.

14 Q So you had -- you or the members of the team that were  
15 working on this case that day had gone into the home and had  
16 started the search before you returned to the home with  
17 Mr. Goklu?

18 A That is correct.

19 Q So when you got -- when you -- were you the person who  
20 transported Mr. Goklu back to his house?

21 A Yes, I was.

22 Q Or you were in the car with him?

23 A Correct.

24 Q And when you got back to Mr. Goklu's house with Mr. Goklu  
25 and you went inside, there were agents going through the

Liefke - cross - Singer

449

1 house; correct?

2 A Yes, there were.

3 Q And would it be fair to say that Mr. Goklu was unaware of  
4 the fact that there were going to be multiple federal agents  
5 searching his house at the -- until he arrived at the home and  
6 saw it happen?

7 A I believe when I arrested him I told him we had the  
8 search warrant for his residence and his electronic devices so  
9 I believe he was aware prior to arriving at his house.

10 Q And when you got him to his house, you took him inside to  
11 the dining room and sat down to interview him?

12 A Correct.

13 Q And the interview that took place took place while the  
14 agents were in the house searching?

15 A Correct.

16 Q Looking in drawers, looking under -- looking everywhere;  
17 correct?

18 A Correct.

19 Q And as a result of the search, you ant you meaning the  
20 team, recovered approximately 20 or more electronic devices?

21 A I don't remember the exact amount but it was --

22 Q There were a number of them?

23 A A number of different electronic devices, yes.

24 Q Computers, phones, various flash drives or external hard  
25 drives, things of that nature?



Liefke - cross - Singer

450

1 A Yes.

2 Q And all of these items were sent to a lab to be reviewed  
3 by technicians?

4 A Yes, they were.

5 Q All right, so the last -- you just offered some testimony  
6 about various Signal threads that were recovered from the  
7 phone and these were Signal threads from Mr. Goklu's phone  
8 with other people; correct?

9 A Correct.

10 Q And you -- I think the last one that you referenced was  
11 the -- were the messages where the term washed was mentioned;  
12 is that right?

13 A Yes.

14 Q Okay. And this was with a person whose identification  
15 along with the phone number on the top of the thread also says  
16 the name Big Apple; is that right?

17 A I don't know who -- I don't know if it was labeled or  
18 not.

19 MR. SINGER: Ms. Sahli, can we put up one page of  
20 that.

21 MS. SAHLI: This is Government Exhibit 228 in  
22 evidence starting at page 12, message thread with Big Apple.

23 MR. SINGER: Yes.

24 BY MR. SINGER:

25 Q Mr. Liefke, you're able to see that on your screen?

Liefke - cross - Singer

451

1 A Yes, I am.

2 Q And let me direct your attention to the top of the page,  
3 right, there's a phone number listed, correct; 1201 with some  
4 other numbers, is that --

5 A Correct.

6 Q All right. And that would be the phone number of the  
7 person who was communicating with Mr. Goklu?

8 A Yes.

9 Q And underneath that there's the name Big Apple; right?

10 A Yes.

11 Q Would that be a nickname of some kind for the person who  
12 is using that phone?

13 A Correct.

14 MR. SINGER: Thank you, Ms. Sahli.

15 Q So I guess just to -- for clarity sake when we're talking  
16 about this thread we're talking about Big Apple, okay?

17 A Okay.

18 Q So Mr. Goklu has a conversation with Big Apple a text  
19 message conversation on Signal; correct?

20 A Correct.

21 Q And you reviewed the entire -- the entire thread?

22 A Yes.

23 Q Okay. Meaning the entire text history that's on the  
24 phone between those two people?

25 A Whatever was still present on the phone, yes.

Liefke - cross - Singer

452

1 Q And there was a lot of ugliness on there, would it be  
2 fair to say?

3 A Yes.

4 Q Name calling, threats, things of that nature?

5 A Correct.

6 Q Between the two -- between the Big Apple and Mr. Goklu?

7 A Yes.

8 Q Okay. And the Reference to the term wash, that they  
9 needed to wash some additional money, that reference was made  
10 by Big Apple, is that correct, not by Mr. Goklu?

11 A That is correct.

12 Q And, in fact, the message, the bubble, I guess, that  
13 is -- that contains the word wash in it, is the last bubble or  
14 message in the entire thread with Big Apple; is that correct?

15 A I don't recall off the top of my head.

16 MR. SINGER: Ms. Sahli, if you can pull that up  
17 please.

18 MS. SAHLI: Government Exhibit 228 in evidence page  
19 22.

20 (Exhibit published.)

21 BY MR. SINGER:

22 Q I'm sorry, it was the third from the left. This page  
23 that's on the screen now is the -- is the end of the thread  
24 that appears who Mr. Goklu's phone is that correct?

25 A Yes.

Liefke - cross - Singer

453

1 Q And the series, I think there's one, two, three, four,  
2 five, six bubbles -- six separate bubbles that have the dark  
3 background. Those were texts made by Big Apple; correct?

4 A Yes, correct.

5 Q Not by Mr. Goklu?

6 A Not by the defendant, no.

7 Q All right. And, again, the third to the last where it  
8 says I still got to wash another 29K and then two others after  
9 that, that is the end of the thread between Big Apple and  
10 Mr. Goklu that was recovered from the phone; is that right?

11 A Yes.

12 MR. SINGER: Thank you, Ms. Sahli.

13 BY MR. SINGER:

14 Q And from your investigation, you have no evidence that  
15 Mr. Goklu and Big Apple ever engaged in any transaction; is  
16 that correct?

17 A I do not know.

18 Q Okay. And that is the -- that one mention by Big Apple  
19 of the term wash, is the only reference in the 350 or so pages  
20 in Government Exhibit 228 of anything suggesting drugs; is  
21 that correct, or money laundering?

22 A Yes.

23 Q And in your investigation of Mr. Goklu and I guess based  
24 on review of all the -- all of his electronics, in various  
25 forms, from the surveillance that you conducted, from the

Liefke - redirect - Diouf

454

1 interview that you had with Mr. Goklu after he was arrested,  
2 you have no other evidence that Mr. Goklu engaged in any  
3 transaction that you know involved money laundering or drug  
4 money; is that correct?

5 A I, I did not witness any other transactions besides the  
6 ones I spoke about, no.

7 Q Well, the ones that you spoke about, the various threads  
8 that you testified about, the only one that references even  
9 obliquely money laundering is the one with Big Apple; is that  
10 correct?

11 A I believe so, that --

12 Q Okay. Well, you know so, there were no other  
13 communications or text messages referencing either directly or  
14 by implication drug money; is that correct?

15 A Correct.

16 MR. SINGER: Thank you, sir, I have nothing else.

17 THE COURT: Redirect?

18 MS. DIOUF: Just very briefly.

19 REDIRECT EXAMINATION

20 BY MS. DIOUF:

21 Q Mr. Liefke, in your training and experience, do people in  
22 text messages usually explicitly reference drugs?

23 A No, they do not.

24 Q What about drug money?

25 A No.

Liefke - redirect - Diouf

455

1 Q What about money laundering?

2 A No, they're trying to hide what their true intentions  
3 are.

4 MS. DIOUF: Thank you, nothing further.

5 THE COURT: Any recross?

6 MR. SINGER: No, Your Honor, thank you.

7 THE COURT: Thank you very much you may step down  
8 and you are excused.

9 (Witness excused.)

10 (Continued on the next page.)

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Proceedings

456

1 THE COURT: Let me ask the government, do you have  
2 another witness here?

3 MS. DIOUF: We're checking, Your Honor.

4 THE COURT: You know what folks, we're going to take  
5 an early lunch break. It's about quarter of 1 so be ready to  
6 go again at 1:45 and we'll start again with the next witness,  
7 might as well take our break now. Enjoy your lunch. Remember  
8 don't talk about the case even with each other. Don't do any  
9 research and keep an open mind. Have a good lunch everyone.

10 THE COURTROOM DEPUTY: All rise.

11 (Jury exits.)

12 THE COURT: Thanks, sorry about that quick change of  
13 mind my deputy whispered to me. I have a 1 o'clock civil  
14 conference so this is perhaps better for me. So folks be  
15 ready to go as quarter to 2 and we'll start with your next  
16 witness.

17 How many more, two more I think you said.

18 MS. DIOUF: Yes, Your Honor two more and they are, I  
19 expect, going to be very brief. FinCEN witness and a  
20 Department of Financial Services person and that's it.

21 THE COURT: Okay. In the interim my law clerk also  
22 will give you a copy of the draft verdict sheet which won't  
23 seem all that earth shattering I don't think, okay?

24 MS. DIOUF: Thank you, Your Honor.

25 (Luncheon recess taken.)

TARWACKI - DIRECT - MS. KASSNER

457

1 AFTERNOON SESSION

2 (Time noted 1:45 p.m.)

3 THE COURTROOM DEPUTY: All rise.

4 (Jury enters the courtroom.)

5 THE COURT: Have a seat everyone. I hope you had a  
6 good lunch Ladies and Gentlemen, and maybe got outside and  
7 enjoyed the weather.

8 Okay. So we'll have the Government call their next  
9 witness.

10 MS. KASSNER: Thank you, Your Honor.

11 The Government calls Robert Tarwacki of the New  
12 York State Department of Financial Services to the stand.

13 THE COURT: All right. Mr. Tarwacki, if you will  
14 approach the witness stand up here and remain standing for a  
15 moment so that you can be sworn in.

16 THE COURTROOM DEPUTY: Please raise your right hand.

17 Do you solemnly swear or affirm the testimony you  
18 are about to give will be the truth, the whole truth, and  
19 nothing, but the truth?

20 THE WITNESS: I do.

21 THE COURTROOM DEPUTY: State and spell your name for  
22 the record.

23 THE WITNESS: Robert Tarwacki; T-A-R-W-A-C-K-I.

24 THE COURT: You may inquire.

25 (Continued on the next page.)



TARWACKI - DIRECT - MS. KASSNER

458

1 **ROBERT TARWACKI,**

2 called as a witness, having been duly

3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. KASSNER:

6 Q Good afternoon. Mr. Tarwacki.

7 Where do you currently work?

8 A I work for the New York State Department of Financial  
9 Services.

10 Q What is your job title?

11 A I am a criminal investigator.

12 Q What geographic area does your office cover?

13 A Our office covers the entire State of New York.

14 Q Are you assigned to a particular unit or section?

15 A Yes. The Criminal Investigations Bureau.

16 Q How long have you worked at the Criminal Investigations  
17 Bureau?

18 A Since March of 2008.

19 Q What are your current job responsibilities as the -- at  
20 the Criminal Investigations Bureau?

21 A We investigate any violations of the banking law as well  
22 as any violations of the superintendent regulations related to  
23 the money services businesses throughout the state.

24 THE COURT: You have to go slower.

25 THE WITNESS: Sorry.

TARWACKI - DIRECT - MS. KASSNER

459

1 THE COURT: Remember, court reporter.

2 THE WITNESS: Sorry.

3 THE COURT: Yes.

4 Q Have you obtained any certifications in connection with  
5 your role as a criminal investigator?

6 A I am a certified fraud examiner.

7 Q Based on your training and experience, are you familiar  
8 with the requirements for people and companies to engage in  
9 the business of transmitting money in the State of New York?

10 A Yes.

11 Q Generally speaking, what is required to conduct a money  
12 transmitting business in the State of New York?

13 A You must be vetted by the Department of Financial  
14 Services as well as your owners and operators. You must  
15 submit filings for a license and pay a fee.

16 Q What is the purpose of the license and all of these  
17 steps?

18 A The license generally serves to protect the consumers of  
19 the State of New York from practices that maybe harmful to  
20 them.

21 Q Does that licensing requirement apply to the exchange of  
22 cryptocurrency for cash?

23 A Yes.

24 Q And more specifically, do you need a license to engage in  
25 a business of exchanging BitCoin for cash in exchange for a

TARWACKI - DIRECT - MS. KASSNER

460

1 fee in the State of New York?

2 A Yes.

3 Q And if you wanted to exchange BitCoin for cash in New  
4 York State, can you briefly explain to the jury what exactly  
5 you need do to get that license?

6 A You would need to first apply with the Department of  
7 Financial Services and then you would have to submit to a KYC  
8 information for your customers as well as your owners and  
9 principles for your organization. The Department would then  
10 vet that personnel as well as do background checks on both the  
11 institutions and the individuals. And then, examiners will do  
12 a bi-yearly exam of the organization to make sure you maintain  
13 those principles.

14 Q You used the term "KYC." What is KYC?

15 A Know your customer. It's general information about the  
16 customers that are going to use your services.

17 Q Is it in the regular practice of The New York State  
18 Department of Financial Services to maintain records of  
19 entities and individuals that are licensed to conduct the  
20 business of money transmitting money?

21 A Yes.

22 Q Are you familiar with those records?

23 A Yes.

24 Q Are the records made and kept in the regular course of  
25 business?

TARWACKI - DIRECT - MS. KASSNER

461

1 A Yes.

2 Q Are they saved in realtime?

3 A Yes.

4 Q Is the New York State Department of Financial Services is  
5 under a duty to accurately record and maintain such records?

6 A Yes.

7 Q Is it the regular practice of members of the New  
8 York State Department of Financial Services to search for and  
9 retrieve licenses of individuals and companies engaged in the  
10 business of transmitting money?

11 A Yes.

12 Q Have you personally conducted those searches?

13 A Yes, I have.

14 Q Were you asked to conduct a search of official records in  
15 connection with this case?

16 A Yes.

17 Q Were you otherwise involved in the investigation of this  
18 case?

19 A No.

20 Q Did you perform that search?

21 A Yes, I did.

22 Q Did you document the results of your search?

23 A Yes.

24 MS. KASSNER: So, with permission from Your Honor,  
25 I'd like to show just the witness Government's Exhibit --

TARWACKI - DIRECT - MS. KASSNER

462

1 first what's been marked as Government's Exhibit 102.

2 THE COURT: Yes, you may. If you look on the screen  
3 in front of you.

4 THE WITNESS: Okay.

5 Q And if you can just let us know when you can see it?

6 A It's here.

7 Q And let's start with Government's Exhibit 102 alone.

8 What is Government's Exhibit 102?

9 A If you could just go back. I have 103 on the screen.  
10 Thank you.

11 Exhibit 102 is a certification from the Department  
12 of Financial Services signed by myself stating that Mustafa  
13 Goklu is not licensed to perform money service businesses in  
14 the State of New York.

15 MS. KASSNER: If we could also show just the witness  
16 what has been previously marked as Government's Exhibit 103.

17 Q Do you recognize Government's Exhibit 103?

18 A I do.

19 Q What is it?

20 A Exhibit 103 is also a certification from the New  
21 York State Department of Financial Services signed by myself  
22 stating that Mustangy Corp. USA is not licensed to conduct  
23 money service business in the New York State.

24 Q How do you recognize Government's Exhibit 102 and 103?

25 A I created them.

TARWACKI - DIRECT - MS. KASSNER

463

1 MS. KASSNER: At this time, the Government would  
2 move to admit Government's Exhibit 102 and 103 into evidence  
3 and publish them to the jury.

4 THE COURT: Any objection?

5 MR. SINGER: No, Your Honor.

6 THE COURT: All right. 102 is admitted and you may  
7 publish them.

8 (Exhibit published.)

9 MS. KASSNER: If we could first pull up  
10 Government's Exhibit 102.

11 Q What were the conclusions of your search of Mustafa Goklu  
12 also known as Michael Goklu, with the listed date of birth and  
13 social security number on Government's Exhibit 102?

14 A When we conducted the search there were not results in  
15 our licensing database for Michael Goklu or that social  
16 security number.

17 Q And Mustafa Goklu?

18 A The same. There were no results for Mustafa Goklu  
19 either.

20 MS. KASSNER: If you could pull up  
21 Government's Exhibit 103 for the jury, please.

22 Q What were the conclusions of your search with respect to  
23 Mustangy Corp. USA with the listed identification number in  
24 Government's Exhibit 103?

25 A For Mustangy Corp. USA and the ID number provided, there

TARWACKI - DIRECT - MS. KASSNER

464

1 were no results in the licensing database.

2 Q What, if anything, are you able to conclude based on your  
3 search about whether Michael Goklu or Mustafa Goklu or  
4 Mustangy Corp. USA is licensed to exchange BitCoin for cash in  
5 the State of New York?

6 A The Department of Financial Services does not recognize  
7 the license for any of these entities or individuals.

8 MS. KASSNER: Thank you, Your Honor.

9 No further questions.

10 THE COURT: All right. Thank you.

11 Your witness, Mr. Singer.

12 MR. SINGER: I have no questions.

13 Thank you, judge.

14 THE COURT: All right. Thank you.

15 You are free to go.

16 Thank you very much, Mr. Tarwacki.

17 Does the Government have another witness?

18 MS. KASSNER: Yes, Your Honor.

19 At this time the Government calls Theodore Vlahakis  
20 of the U.S. Department of Treasury to the stand.

21 THE COURT: All right. Mr. Vlahakis, if you will  
22 approach the witness stand and remain standing for one moment  
23 so we can swear you in.

24 THE WITNESS: Thank you.

25 THE COURTROOM DEPUTY: Please raise your right hand.

TARWACKI - DIRECT - MS. KASSNER

465

1 Do you solemnly swear or affirm that the testimony  
2 you are about to give is the truth, the whole truth and  
3 nothing, but the truth?

4 THE WITNESS: Yes, I do.

5 THE COURTROOM DEPUTY: Thank you.

6 You can have a seat.

7 THE WITNESS: Thank you.

8 THE COURTROOM DEPUTY: Just speak into the  
9 microphone.

10 Please state and spell your name for the record.

11 THE WITNESS: Theodore Vlahakis. T-H-E-O-D-O-R-E.  
12 V-L-A-H-A-K-I-S.

13 THE COURT: All right. You may inquire.

14 (Continued on the following page.)  
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VLAHAKIS - DIRECT - MS. KASSNER

466

1 THEODORE VLAHAKIS,

2 called as a witness, having been duly

3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. KASSNER

6 Q Good afternoon.

7 A Good afternoon.

8 Q Where do you currently work?

9 A U.S. Department of Treasury Financial Crimes Enforcement  
10 Network commonly known as FinCEN.

11 Q How long have you worked at FinCEN?

12 A Since March of 2009.

13 Q When you started working at FinCEN, what was your role?

14 A Bank Secrecy Act Specialist.

15 Q What is the bank secrecy act?

16 A The Bank Secrecy Act is a federal antimoney laundering  
17 statute.

18 Q What did your role as a Bank Secrecy Act Specialist  
19 entail?

20 A I address regulatory inquiries regarding the Bank Secrecy  
21 Act for financial institutions, regulators, and law  
22 enforcement via email and telephone.

23 THE COURT: You can pull that microphone closer to  
24 you.

25 THE WITNESS: Oh.

VLAHAKIS - DIRECT - MS. KASSNER

467

1 THE COURT: Yeah, it moves. There you go.

2 THE WITNESS: Thank you.

3 THE COURT: That's wonderful. Okay.

4 Q Are you currently assigned to a particular unit or  
5 division at FinCEN?

6 A Yes, I am.

7 Q What is your current job title?

8 A Senior Compliance Officer.

9 Q What are your job responsibilities as a Senior Compliance  
10 Officer?

11 A I help to ensure that financial institutions understand  
12 the requirements under the Bank Secrecy Act and I also provide  
13 training to internal and external institutions.

14 Q How long have you been doing that work?

15 A Since July of 2017.

16 Q Can you tell the jury a little bit about what FinCEN  
17 does?

18 A Sure.

19 FinCEN is a bureau of the U.S. Department of  
20 Treasury tasked with protecting the financial system from  
21 money laundering and other types of illicit financial activity.

22 Q How does FinCEN accomplish that mission?

23 A FinCEN accomplishes that mission by requiring certain  
24 type of financial institutions to file reports with us and to  
25 keep certain types of records and to have an antimoney

1 laundering program.

2 Q What is an antimoney laundering program?

3 A An antimoney laundering program has as its purpose to  
4 help ensure that a financial institution is not laundering  
5 money wittingly or unwittingly. And so, the purpose is to  
6 help protect the financial institution -- to help protect the  
7 financial system.

8 Q Earlier and several times now you've mentioned financial  
9 institutions.

10 What are some kinds of financial institutions that  
11 FinCEN regulates?

12 A Okay. So when we think of as a depository institution,  
13 so a bank or a credit union, but also a casino, a broker  
14 dealer, a hedge fund, what is known as a money services  
15 business, and various types of financial institutions. We  
16 require them to file certain reports with us and keep records  
17 and have a money laundering program.

18 Q Is there a minimum size of a business that FinCEN  
19 regulates?

20 A No.

21 Q Could it be as small as one person?

22 A Yes.

23 Q You mentioned money service businesses. What is a money  
24 service business?

25 A So we characterize a money service business based on the

VLAHAKIS - DIRECT - MS. KASSNER

469

1 type of activity, financial activity, that they conduct. And  
2 so, money service business is defined as, for example, a check  
3 cashers a money transmitter, /-FPLT ers and/-S sellers of  
4 money /PHUPB s, or /-RBGS paid access, U.S. Postal Service.  
5 /S-FS are some example/K-FRPL .

6 Q You mentioned money transmitters. What is a money  
7 transmitter?

8 A Money transmitter is an entity that is engaged in money  
9 transmission. And money transmission is defined as the  
10 acceptance of currency funds or its equivalent from one person  
11 or the location and the transmission of the currency funds or  
12 its equivalent to another person or location by any means.

13 Q Would that include somebody that engages in the business  
14 of exchanging cryptocurrency, specifically BitCoin, for cash?

15 A Yes.

16 Q In exchange for a fee?

17 A Sure. Yes.

18 Q Based on your training and experience, are you familiar  
19 with the requirements for people and companies to engage in  
20 the business of transmitting money in the United States?

21 A Yes, I am.

22 Q Generally speaking, what is required to conduct a money  
23 transmitting business in the United States?

24 A Number one, the money transmitter, since they are a money  
25 services business, must register with FinCEN by completing

VLAHAKIS - DIRECT - MS. KASSNER

470

1 what's called a registration of money services business form,  
2 FinCEN 107, within 180 days of establishing their business or  
3 conducting the first qualifying transaction. And since  
4 they're there financial institutions, they have to file  
5 certain reports with us, including reports of suspicious  
6 transactions, keep certain records and have an antimoney  
7 laundering program.

8 Q You mentioned a Form 107, what is the purpose of  
9 requiring that registration, that Form 107?

10 A When a money services business, a money transmitter  
11 completes that form, it provides valuable information  
12 regarding the type of business, the owner information, the  
13 address, identifying information such as taxpayer  
14 identification number, location supporting documents, primary  
15 transaction account where the bank account is held. And so,  
16 that provides valuable information for FinCEN and law  
17 enforcement officials to follow the paper trail.

18 MS. KASSNER: If we could please show the witness  
19 what has been previously marked as Government's Exhibit 105.

20 THE COURT: Just the witness?

21 MS. KASSNER: Just the witness.

22 THE COURT: All right.

23 MS. KASSNER: Thank you.

24 Q If you could let us know when you see it on the screen.

25 A I see it.

VLAHAKIS - DIRECT - MS. KASSNER

471

1 Q Do you recognize Government's Exhibit 105?

2 A Yes, I do.

3 Q What is it?

4 A FinCEN Form 107, Registration of Money Service Business.

5 Q How do you recognize Government's Exhibit 105?

6 A This form was created and maintained in the ordinary  
7 course of business.

8 Q And is this a form that you use in your role at FinCEN?

9 A Yes.

10 MS. KASSNER: At this time, the Government would  
11 move to admit Government's Exhibit 105 into evidence and  
12 publish it to the jury.

13 THE COURT: Any objection?

14 MR. SINGER: No, Your Honor.

15 THE COURT: All right. 105 is admitted and you may  
16 publish.

17 (Exhibit published.)

18 MS. KASSNER: So if we could turn to Page 2 of  
19 Government's Exhibit 105. And blow up the section that says  
20 part two, registrant information.

21 Q Can you please explain to the jury what a registrant is  
22 required to fill out as part of part two of the Form 107?

23 A Sure.

24 So this is information relating to --

25 THE COURT: You may want to wait. I can't read it

VLAHAKIS - DIRECT - MS. KASSNER

472

1 on the large screen.

2 MS. KASSNER: If we can just blow up the top part.

3 Is that clearer?

4 THE COURT: No. This screen is terrible. It is so  
5 washed out is the problem. There we go. Much better.

6 Thank you.

7 Q So according to this part of the Form 107, what is a  
8 registrant required to provide in terms of information?

9 A So in part two, a registrant is providing very basic  
10 information about their business and their identity. So their  
11 name, their address, taxpayer identification number. And if  
12 it's a corporate entity, they'd indicate that and they would  
13 input the corporate information, such as the business name,  
14 business address. And so, that's what we want to know. Also  
15 website, you can see email, compliance contact. So just very  
16 basic information that we would expect the business would have  
17 on file.

18 MS. KASSNER: Moving to Page 3 of  
19 Government's Exhibit 105.

20 Q There's a section at the top that says, part three, owner  
21 or controlling person.

22 What is a registrant required to provide here in  
23 terms of information?

24 A So this is the person who owns or controls the money  
25 services business. And especially when we're talking about

VLAHAKIS - DIRECT - MS. KASSNER

473

1 entities, corporate entities, in part two. Here in part  
2 three, we want to know the person behind the entities. We  
3 don't just want the business information names and identifying  
4 information, we want to know the person who is actually  
5 controlling it. The individual identifying with the business.

6 Q Why does FinCEN request this information?

7 A It's the theme of the paper trial. So it allows FinCEN  
8 and law enforcement to understand who is conducting this  
9 business. And these businesses are required to file certain  
10 reports with us so we can cross reference the information in  
11 the reports with the information in this form.

12 MS. KASSNER: Moving to the bottom of this, there's  
13 a section part four that says, money services and product  
14 information. And perhaps we can just blow up the very top  
15 with the heading so everyone can see it.

16 Q What kind of information is a registrant required to  
17 provide as part of part four?

18 A Okay. In part four, FinCEN is requesting information  
19 relating to the types of activities the money service business  
20 is engaged. So that could be, money transmission, as I  
21 mentioned earlier. It could be check cashing, issue or sale of  
22 money orders, prepaid access and product information. And also  
23 we're requesting information relating to the location where  
24 they are conducting business. Is it in one or more states,  
25 all states, territories. And they would check the



VLAHAKIS - DIRECT - MS. KASSNER

474

1 corresponding boxes relating to both geographical and product  
2 services information.

3 MS. KASSNER: If we could turn to the next page of  
4 Government's Exhibit 105, which I believe is Page 5. At the  
5 top there is a section that says part five.

6 Moment.

7 Q Part five, primary transaction account for MSB  
8 activities.

9 What is an MSB?

10 A Money services business.

11 Q At a high level, what kind of information is the form  
12 asking for?

13 A Just where they keep their bank account. So which  
14 financial institutions holds their account.

15 Q Why does FinCEN request this information?

16 A So I go back to the paper trail theme. And in this case,  
17 we would like to know the financial institution name and  
18 information because financial institutions, including  
19 depository institutions, can file reports, including reports  
20 of suspicious activity on money services businesses. And  
21 also, this is very helpful for foreign located MSBs. So those  
22 are MSBs that are not physically located in the United States,  
23 but are availing themselves of this jurisdiction. Maybe they  
24 have U.S. based customers. And, if so, we would like to know  
25 where the primary transaction account is.

VLAHAKIS - DIRECT - MS. KASSNER

475

1 MS. KASSNER: Turning to the second part of this  
2 form. There is a section that says part six. If we can blow  
3 that up.

4 Q Part six says, location of supporting  
5 documentation/address of agent for service of process.

6 What is part six requesting?

7 A Okay. So part six, just building off of my previous  
8 point relating to foreign MSBs. If the MSB is in a foreign  
9 country, we would like to know where are they keeping their  
10 supporting documentation. So information relating to the type  
11 of business, you know, business volumes, and also their  
12 investment agent service process since they're using this  
13 jurisdiction to conduct activity. So that's all that's asking  
14 for.

15 MS. KASSNER: Okay. If we can take this exhibit  
16 down.

17 Thank you.

18 Q In addition to registering with the U.S. Secretary of  
19 Treasury by filing a Form 107.

20 What, if anything, else is a money transmitting  
21 business required to do to transmit money in the United  
22 States?

23 A Okay. So they are required to have what's known as a  
24 antimoney laundering program and they also are required to  
25 file certain reports with FinCEN. And by reports, I'm

VLAHAKIS - DIRECT - MS. KASSNER

476

1 referring to reports possibly related to suspicious  
2 transactions and also reports of transactions in currency over  
3 \$10,000. And they also required to keep certain records,  
4 internal records. So they're not filing reports of those  
5 records. They're just keeping them internally.

6 Q Are all these requirements setout in a place that is  
7 available to the public?

8 A Yes.

9 Q Where is it available?

10 A On the FinCEN public website. If you go to  
11 www.FinCEN.gov there is a special pretty visible tab for money  
12 services business. And anyone can click on that tab and we  
13 have FAQ documents that describe what a money services  
14 business is in far more detail than I have just described,  
15 what qualifies as an MSB. What an antimoney laundering  
16 program is. We have materials in English, and I believe, eight  
17 foreign languages. And, you know, if someone reads over those  
18 materials and are still confused, they can contact the  
19 regulatory helpline, which I mentioned I was working in that  
20 helpline for almost nine years, and pose their questions via  
21 email or telephone and it is answered within 24-hours.

22 Q Does FinCEN maintain a database of all of the registered  
23 money transmitting businesses?

24 A Yes.

25 Q Are you familiar with the contents of those records?

VLAHAKIS - DIRECT - MS. KASSNER

477

1 A Yes.

2 Q Are the records made and kept in the regular course of  
3 FinCEN's business and activities?

4 A Yes.

5 Q Are they saved in realtime?

6 A Yes.

7 Q Is FinCEN under a duty to accurately record and maintain  
8 such records?

9 A Yes.

10 Q Is it the regular practice of FinCEN employees to search  
11 for or retrieve registrations of individuals and companies  
12 engaged in the business of transmitting money?

13 A Yes.

14 Q Have you personally conducted searches of registrations  
15 and records pertaining to money transmitters?

16 A Yes.

17 Q On approximately how many occasions?

18 A I would say at least 30.

19 Q Was FinCEN asked to conduct a search of official records  
20 in connection with this case?

21 A Yes.

22 Q Did FinCEN perform that search?

23 A Yes.

24 Q Did you personally review the results of that search and  
25 confirm that they were accurate?

VLAHAKIS - DIRECT - MS. KASSNER

478

1 A Yes, I did.

2 Q Were you otherwise involved in the underlining  
3 investigation of this case?

4 A No.

5 Q Did FinCEN document the results of its search?

6 A Yes.

7 MS. KASSNER: At this time, I would request to show  
8 just the witness what has been previously marked for  
9 identification as Government's Exhibit 101.

10 THE COURT: All right.

11 Q Do you recognize Government's Exhibit 101? And you can  
12 let us know when you see it.

13 A Sure. I'm still waiting for it.

14 Q It might take a moment.

15 A I see it now.

16 Q What is Government's Exhibit 101?

17 A Government's Exhibit 101 is the records of our certified  
18 search for BSA records and this is just a cover letter.

19 MS. KASSNER: If we could turn to Page 2 and then  
20 also show this Page 3.

21 Q What are those pages?

22 A These pages document the results of our search for the  
23 entities named in the report.

24 Q How do you recognize Government's Exhibit 101?

25 A This is a record that is created and maintain in the

VLAHAKIS - DIRECT - MS. KASSNER

479

1 ordinary course of business by FinCEN.

2 Q And have you reviewed it before?

3 A Yes.

4 MS. KASSNER: At this time, the Government would  
5 move to admit Government's Exhibit 101 into evidence and  
6 publish it to the jury beginning with Page 2.

7 THE COURT: Any objection?

8 MR. SINGER: No, judge.

9 THE COURT: All right. 101 is admitted and you may  
10 publish.

11 (Exhibit published.)

12 Q While we're pulling that up, you mentioned BSA.

13 Just for clarity, what does BSA stand for?

14 A BSA stands for Bank Secrecy Act and that's the antimoney  
15 laundering statute that requires financial institutions to  
16 have certain recording keeping and reporting obligations.

17 Q So just looking at just Page 2 of  
18 Government's Exhibit 101, what were the results of the search  
19 for a FinCEN registration for Mustafa Goklu AKA Michael Goklu  
20 with the listed date of birth and social security number on  
21 Government's Exhibit 101?

22 A This indicates that a diligent search was not able to  
23 reveal any registrations or FinCEN Form 107 registrations.

24 THE COURT: Oh, I'm sorry. It's not legible on this  
25 overhead.

VLAHAKIS - DIRECT - MS. KASSNER

480

1 MS. KASSNER: Your Honor, perhaps we could use the  
2 Elmo. I don't know if that would help.

3 THE COURT: You know, it is really the projector. I  
4 gather the jury is looking at the screen in front of them. I  
5 don't know if you want to pivot that one over there a little  
6 bit more. At least some people will be able to see that one.

7

8 (Continued on the following page.)

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VLAHAKIS - REDIRECT - MS. KASSNER

481

1 MS. KASSNER: (Continuing)

2 THE COURT: Don't get it too far from the wall. I  
3 think you might be pulling the cord out. Be careful.

4 I shouldn't have you moving furniture. Why don't  
5 you just go back to what you were doing.

6 BY MS. KASSNER:

7 Q So you were just explaining what this second page of  
8 Government Exhibit 101 indicates?

9 A Correct. It indicates that FinCEN has conducted a  
10 diligent search for FinCEN 107, registration of money services  
11 businesses and for these entities, and we were able to find no  
12 such records for the dates ranging from January 1st, 2001  
13 through July 20th, 2020.

14 Q And turning to the third page of Government Exhibit 101.

15 What, if anything, is indicated by this page?

16 A This page indicates the same information for a different  
17 subject, Mustangy Corp USA. We were able to after diligent  
18 search, not able to locate any FinCEN Form 107 registration of  
19 money service business forms for the dates January 1st, 2001  
20 through July 20, 2020.

21 Q Based on your search or FinCEN search, what, if anything,  
22 are you able to conclude about whether Mustafa Goklu, also  
23 known as Michael Goklu, or Mustangy Corp. USA registered a  
24 money transmitting business with the U.S. Department of  
25 Treasury.



PROCEEDINGS

482

1 A There was no such registration submitted by or behalf of  
2 either of those entities.

3 MS. KASSNER: Just one moment, Your Honor.

4 THE COURT: All right.

5 MS. KASSNER: Nothing further, Your Honor. Thank  
6 you.

7 THE COURT: Thank you. Your witness.

8 MR. SINGER: I have no questions. Thank you.

9 THE COURT: Okay. Thank you very much Mr. Tarwacki.  
10 You're free to do.

11 THE WITNESS: Thank you very much.

12 (The witness steps down.)

13 THE COURT: Government.

14 MS. KASSNER: Your Honor, at this time, the  
15 Government rests.

16 THE COURT: All right. So ladies and gentlemen,  
17 since the Government has rested with respect to its  
18 presentation of evidence, I do need a few minutes to discuss  
19 some matters with the parties. I'm going to give you an  
20 early, but slightly shorter break. So hopefully, you'll be  
21 ready to go at 35 after 2:00. Okay.

22 THE COURTROOM DEPUTY: All rise.

23 (Jury exits the courtroom.)

24 (In open court; Jury not present.)

25 THE COURT: Have a seat.

PROCEEDINGS

483

1           So Mr. Singer, first of all, I want to ask you if  
2           you've decided how you wanted to proceed, if, at all, with the  
3           defense case.

4           MR. SINGER: Your Honor we intend to rest.

5           THE COURT: All right.

6           MR. SINGER: I've discussed with Mr. Goklu his  
7           constitutional right to testify in his own behalf, and he has  
8           indicated that he will not be testifying.

9           THE COURT: All right. So Mr. Goklu, as you just  
10          heard your lawyer, Mr. Singer, has confirmed for me that you  
11          do not intend to testify in your own defense at this trial.

12          THE DEFENDANT: Correct, Your Honor (in English).

13          THE COURT: Okay. I want to make sure that you feel  
14          you've had sufficient time to discuss with your attorneys  
15          whether or not to testify.

16          Do you feel like you've had enough time to discuss  
17          that decision with them?

18          THE DEFENDANT: Your Honor, I decided I'm not going  
19          to testify, yes (in English).

20          THE COURT: But do you feel like you've had enough  
21          time to make that decision.

22          You have to speak a little slower and clearer for  
23          our court reporter. Say that again.

24          THE DEFENDANT: This morning I am not going to  
25          testify in this court, Judge (in English).

PROCEEDINGS

484

1 THE COURT: And you feel you've had enough time to  
2 discuss that decision with your attorneys?

3 THE DEFENDANT: Yes, Your Honor. I have enough  
4 time. I discussed with my attorney (in English).

5 THE COURT: Okay. And you understand that you have  
6 the write to testify, but as importantly, you have the right  
7 not to testify, and the jury cannot consider the fact that you  
8 did not testify in deciding whether you're guilty or not.

9 Do you understand that, right?

10 THE DEFENDANT: Correct, Your Honor (in English).

11 THE COURT: Okay. And it's entirely up to you  
12 whether you want to testify or not.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor (in English).

15 THE COURT: All right. Thank you very much,  
16 Mr. Goklu.

17 THE DEFENDANT: Your Honor, thank you (in English).

18 THE COURT: All right. So we'll bring the jury back  
19 in here.

20 Let me ask, also, is there any motion at this time  
21 from the defense?

22 MR. SINGER: Judge, the defense motion at this time  
23 would be to dismiss the two counts of the indictment on the  
24 ground that the evidence, even when viewed in the light most  
25 favorable to the Government does not establish beyond a

## PROCEEDINGS

485

1 reasonable doubt each and ever element of the two crimes  
2 charged.

3 THE COURT: All right. Do you want to elaborate any  
4 further on that with respect to either count, just to preserve  
5 the record?

6 MR. SINGER: No, Your Honor. I will rest on the  
7 record.

8 THE COURT: All right. So let me say I am denying  
9 that request, which obviously can be renewed later. But I'm  
10 denying that because I do find that the evidence is sufficient  
11 for the jury to find, beyond a reasonable doubt, that the  
12 defendant is guilty of both the money laundering and the  
13 unlicensed money transmitting crime. The second crime is,  
14 obviously, more straightforward in terms of the elements,  
15 because it doesn't require a showing of intent of any kind or  
16 even knowledge beyond knowing that he is engaging in what is  
17 unlicensed money transmitting. But the evidence has been  
18 submitted by the Government and that is sufficient for the  
19 jury to find that Mr. Goklu is engaged in the business of  
20 exchanging BitCoin for money, and it appears also may be  
21 selling BitCoin himself, based on the last bit of testimony  
22 that came in through former DEA agent -- and I forgot --  
23 Vlahakis I think his name was.

24 MS. KASSNER: Liefke, Your Honor.

25 THE COURT: Oh, Mr. Liefke. That's right, Liefke.

## PROCEEDINGS

486

1           And so then it's a question of whether he had a  
2     license or not, and the evidence we just heard established  
3     that he neither had a license, as required by the State of New  
4     York, nor was he registered as required by the Department of  
5     Treasury.

6           With respect to the money laundering, I think the  
7     real issue in dispute is the knowledge about the illegal  
8     source of the funds or any intent to conceal or disguise the  
9     source or assist with that. And there has been testimony,  
10    quite honestly, on both issues -- I mean, on both sides of  
11    this issue that a jury can consider, but I do find that  
12    there's enough that they could find beyond a reasonable doubt  
13    that Mr. Goklu was aware, at least, that the undercover was  
14    involved in the drug trade, and that the money that Mr. Goklu  
15    was exchanging for him via these BitCoin transactions was  
16    proceeds from that drug business, the illegal drug business.  
17    And I know much was made of marijuana farms or cannabis farms  
18    being legal in California.

19           And just to cite some of this evidence so the record  
20    is clear, in conversation 804, there was this -- and I say  
21    804, meaning Government Exhibit 804 which happened on  
22    December 11, 2018. The undercover pointedly referenced keys,  
23    K-E-Y-S, trying to introduce the idea to Mr. Goklu that the  
24    undercover was purportedly involved in drug trafficking.  
25    There were several references made by the undercover to

## PROCEEDINGS

487

1 dealing with college kids, his head being chopped off by his  
2 people in California that he was working with, again, in an  
3 effort to build this narrative or profile as a drug dealer  
4 with Mr. Goklu. That came from Government Exhibit 806. The  
5 UC also mentioned in that conversation that he couldn't touch  
6 Coinbase. Again, trying to suggest that the source of his  
7 money was illegal.

8           There were, of course, many references to the  
9 defendant himself being very law enforcement conscious,  
10 concerned about being detected by the NYPD in particular. The  
11 defense has obviously offered a counter narrative about that.  
12 Namely, that Mr. Goklu simply believed that the police would  
13 always act first, take his money, and then figure out later  
14 whether or not there was any illegality, and that Mr. Goklu  
15 was simply concerned about these spurious activities by law  
16 enforcement, and not about -- and not being -- or rather not  
17 being concerned that he was, himself, engaging in anything  
18 illegal, and certainly, not engaging in drug dealing, which he  
19 said on numerous occasions.

20           In Government Exhibit 806, the undercover made clear  
21 that he could get Mr. Goklu oxy and Adderall, A-D-D-E-R-A-L-L,  
22 besides marijuana. Specifically saying, that's what we do.  
23 Mr. Singer, of course, brought out the fact that Mr. Goklu had  
24 no idea what oxy was, so it seemed, and that in general,  
25 Mr. Goklu never bit, if you will, on any of these leads about

## PROCEEDINGS

488

1 drug dealing or expressed any interest or one might argue,  
2 even that it registered what the undercover was talking about.  
3 But again, that's for the jury to decide, what all of those  
4 conversations mean or if they reflect Mr. Goklu's  
5 understanding that the money he was -- or that the BitCoin he  
6 was getting from the undercover was proceeds of drug activity,  
7 illegal drug activity.

8           And then just a couple of other notes. In  
9 Government Exhibit Number 807, the UC again made pointed  
10 remarks about his partner getting money -- oh, I'm sorry, the  
11 defendant made a remark about his partner getting money from  
12 hookers. Again, potentially, some reflection of Mr. Goklu's  
13 own understanding that the financial transactions he and his  
14 partner were involved in were from individuals who engaged in  
15 criminal activity.

16           There were also references to the car being  
17 bullet-proof, and also a number of conversations about  
18 Mr. Goklu's desire to keep the amount of the transactions  
19 below \$100,000 and closer to \$40,000. Again, suggesting, but  
20 it's for the jury to decide, whether or not those indicate  
21 Mr. Goklu's understanding and knowledge that he was doing  
22 something illegal. And again, that inference could go either  
23 to the unlicensed money transmitting or the alleged money  
24 laundering.

25           And then in Government Exhibit 507, there is, of

## PROCEEDINGS

489

1 course, the defendant's statement that he is not a drug guy,  
2 and suggesting further that he wouldn't deal with drug  
3 dealers, so I think even recognizing those statements, there  
4 is enough for a jury to discredit that in some way, because as  
5 the Government then pointed out, via conversation, Government  
6 Exhibit 809, despite Mr. O'Kain, the undercover making clear  
7 that he was selling illegal drugs, Mr. Goklu didn't, at that  
8 moment say I don't want to deal with you.

9           So as I said at the outset, there is obviously  
10 evidence that the parties will argue both ways on the issue of  
11 intent to conceal or disguise money from illegal activities  
12 for purposes of the money laundering charge, but nonetheless I  
13 think the jury could find, as the Government argues, that  
14 Mr. Goklu he is guilty of that. So I will let this case go  
15 forward to them.

16           All right. So we'll bring the jury back in, we will  
17 have the defense rest, and then I guess we could just go ahead  
18 with our jury charge conference, because rather than wait  
19 until 5:30, we have the luck luxury of more time, all right.

20           MS. KASSNER: Yes, Your Honor. And I'm not sure  
21 what Your Honor's preference is, but we are -- we expect the  
22 charging conference will be quite brief. The Government has  
23 one suggested edit and otherwise no comments, and so we are  
24 prepared to close today if Your Honor would prefer to proceed.

25           THE COURT: Well, that would be preferable.



PROCEEDINGS

490

1 Mr. Singer.

2 MR. SINGER: Are you asking my preference or if I  
3 could --

4 THE COURT: Can you close today?

5 MR. SINGER: If Your Honor directs me to close  
6 today, I will. I would prefer to do it in the morning. It's  
7 not -- it was not clear to me until Agent Liefke briefly got  
8 on the stand, until we finished the direct of Mr. O'Kain,  
9 exactly the extent to which the Government was going to be  
10 introducing various pieces of evidence or what the testimony  
11 would be. And so I --

12 THE COURT: I find that --

13 MR. SINGER: I would appreciate the time to process  
14 that so that I can make a, I think, fuller and more coherent  
15 closing argument.

16 THE COURT: All right. Well, let's first see where  
17 we end up with the charge conference. My priority, of course,  
18 is the jury's time, because I don't really want to delay it  
19 unnecessarily, and it seems that we could finish this charge  
20 conference within an hour, and it's just 2:30 now. So I  
21 really want to void having them come back unnecessarily or to  
22 have their deliberation time shortened because tomorrow is  
23 Friday. And so the sooner they get the case, the more time  
24 they have and won't feel rushed to end their deliberations so  
25 that they finish by Friday. That's my concern.

PROCEEDINGS

491

1 MR. SINGER: But the alternative, Your Honor, is to  
2 have them sitting around waiting for an hour, perhaps, and  
3 then perhaps staying later this evening.

4 I understand we want to be finished this tomorrow.

5 THE COURT: But do you have any objections to the  
6 jury charge, because this could take all of 10 minutes?

7 MR. SINGER: I have some.

8 THE COURT: But realistically, do you think this is  
9 going to take more than a half an hour?

10 MR. SINGER: Probably not.

11 THE COURT: All right.

12 MR. SINGER: But again, it's a matter of my  
13 processing the information that came in at the end, both,  
14 certainly, with Mr. O'Kain, as well as with Mr. Liefke's  
15 testimony.

16 THE COURT: Yeah.

17 MR. SINGER: And being able to process that to make  
18 a coherent argument on behalf of my client, and I would  
19 appreciate the time to do that.

20 THE COURT: I understand that. But please  
21 understand what this means, though, because this has some  
22 consequence for your client, and I certainly don't want to  
23 hear any complaint that somehow the jurors are going to be  
24 rushed because it's Friday and they'll get the case by maybe  
25 mid morning tomorrow because we won't use the two hours or so

## PROCEEDINGS

492

1 we have today. So what will happen is tomorrow the Government  
2 will open -- do their initial closing, you will give your  
3 closing, and then the Government will rebut, and then I have  
4 to give them instructions. So we'll probably not give them  
5 the case until noon, maybe, I would guess. That's two and a  
6 half hours from when we start. Yeah.

7 MR. SINGER: I understand that. And they have the  
8 day that they'll have certainly a number of hours in the  
9 afternoon to deliberate, and if they doesn't finish their  
10 deliberations by the end of the day, it'll goes over. There's  
11 nothing unusual about that.

12 THE COURT: No. But a very standard argument I hear  
13 then is, oh, the jury felt pressured to be done by Friday  
14 because they didn't want to come back on Monday. I just want  
15 to make sure you understand and appreciate that. Listen, I'm  
16 willing to give you more time --

17 MR. SINGER: I --

18 THE COURT: Hang on. Please let me finish.

19 If your preference is to put off closings and  
20 summations until tomorrow, you will let you do that, but I  
21 want you to, sort of, understand that one potential  
22 consequence is the jury will have less time on a Friday  
23 afternoon to reach a decision, and sometimes, attorneys  
24 believe that that puts pressure on the jury to reach a  
25 decision more hastily so they don't have to come back in on

PROCEEDINGS

493

1 Monday.

2 MR. SINGER: I'm not concerned about that, Judge.

3 THE COURT: All right. So I'll let them go early  
4 today and then they don't have to sit around for the jury  
5 charge conference and then you'll sum up first thing in the  
6 morning, starting at 9:30. So I'll bring them back in solely  
7 for the purpose of letting the defense rest and then letting  
8 them go early.

9 THE COURTROOM DEPUTY: All rise.

10 (Jury enters the courtroom.)

11 THE COURT: All right. So Mr. Singer, does the  
12 defense intend to present any evidence?

13 MR. SINGER: No, we do not. The defense rests, Your  
14 Honor.

15 THE COURT: All right. Thank you very much,  
16 Mr. Singer.

17 So ladies and gentlemen, today has ended somewhat  
18 unexpectedly earlier than I thought, so I'm going to let you  
19 go today right now, because there are some other matters that  
20 I need to address with the lawyers before they give their  
21 closing statements to you tomorrow. So that's going to happen  
22 first thing tomorrow morning as soon as all of you get here,  
23 so again, follow Ms. Gonzalez's instructions and aim for  
24 9:00 a.m., and then we'll start promptly at 9:30. So you'll  
25 hear both sides' closing statements, Government, then the

## CHARGE CONFERENCE

494

1 defense, and then the Government again, I'll give you the  
2 instructions on the law, and then you'll begin your  
3 deliberations right after that. Okay.

4 So have a wonderful evening, enjoy the rest of the  
5 afternoon, don't talk about the case, don't do any research,  
6 and keep an open mind, all right.

7 THE COURTROOM DEPUTY: All rise.

8 (Jury exits the courtroom.)

9 THE COURT: Okay. Have a seat, everyone. Give me  
10 one second to pull up something on my computer.

11 All right. So I understand that the Government has,  
12 at least, one comment about the draft charges that you  
13 received yesterday. And tell me what page that's on.

14 MS. KASSNER: Yes, Your Honor. It's on Page 25.

15 THE COURT: All right.

16 MS. KASSNER: Count Two. It's the first element.  
17 Actually, I believe it's 24.

18 THE COURT: Twenty-four, yup.

19 MS. KASSNER: So this is related to what the  
20 Government raised at the beginning of the day where it says,  
21 in the middle of the first paragraph, a money transmitting  
22 business is a business which, for a fee, accepts currency for  
23 transfer within or outside the United States.

24 I think the proposal is to change this to, funds,  
25 and then to note, I instruct you that BitCoin qualifies as

## CHARGE CONFERENCE

495

1 funds under the statute.

2 Alternatively, another option would be to write  
3 currency, funds, or other value that substitutes for currency.  
4 I'm not sure if that makes anything easier. But I think the  
5 purpose of this is to clarify that courts have held that  
6 BitCoin qualifies as funds for purposes of this 1960 charge.

7 THE COURT: So the proposal is simply to add a  
8 sentence at the end of that paragraph and after the sentence  
9 that defines conducted controlled, et cetera, as having their  
10 plain meanings.

11 MS. KASSNER: I would do it right after. So I would  
12 put it right after the sentence we're discussing.

13 So it would read, A money transmitting business is a  
14 business which, for a fee, accepts funds for transfer within  
15 or outside the United States. I instruct you that BitCoin  
16 qualifies as funds under the statute. And then continue the  
17 term, money transmitting includes transferring funds on behalf  
18 of the public.

19 THE COURT: Actually, let me look at what your --

20 MS. KASSNER: And I confess, Your Honor, it's very  
21 possible that the Government is responsible for using the term  
22 currency in the first instance. I will note that the  
23 Government wasn't aware that there would be any argument that  
24 BitCoin would not qualify as currency until Special Agent  
25 Infante's testimony.

## CHARGE CONFERENCE

496

1 THE COURT: And hence the issue you raised this  
2 morning.

3 MS. KASSNER: Yes.

4 THE COURT: And I know that you, Mr. Singer, don't  
5 dispute that.

6 Do you have any objection to including that  
7 language? Because I do think we ought to put that issue to  
8 rest and not have the jury speculate. Even though there was  
9 some testimony from the witness, I don't want the jury to  
10 erroneously think that funds won't or don't include BitCoin,  
11 as a legal matter.

12 MR. SINGER: Judge, I think there's actually an  
13 easier way of doing this that is consistent with the law on --  
14 under this charge and the definition of a money transmitting  
15 business, rather than changing the definition of money  
16 transmitting business.

17 I would suggest leaving this sentence as is, that a  
18 money transmitting business is a business which, for a fee,  
19 accepts currency for transfer within or outside the United  
20 States, and then you could add, for purposes of this statute,  
21 BitCoin constitutes currency. That solves the problem that  
22 the Government is raising, but leaves the definition consistent  
23 with what the law is on this statute.

24 THE COURT: Right. It doesn't sound like a bad  
25 suggestion. I just want to -- let me take one look.

CHARGE CONFERENCE

497

1 MR. SINGER: And I do not intend to argue the point  
2 that BitCoin is not currency under the statute.

3 MS. KASSNER: And Your Honor, just very briefly, the  
4 reason for the preference for the term, funds, is because  
5 that's actually the word used in the statute.

6 THE COURT: That's what I was thinking. I think  
7 it's actually not currency, right, and that's what I wanted to  
8 look up just now. We don't recite that part of 1960, but that  
9 is correct, that the words funds and not currency is used,  
10 correct?

11 MS. KASSNER: Yes, Your Honor. I believe it's under  
12 XXXI U.S.C. 5330(d)(1).

13 THE COURT: Right.

14 MS. KASSNER: Which defines money transmitting  
15 business. And it uses the term, Any person who engages as a  
16 business in the transmission of funds.

17 THE COURT: And did you say 5331?

18 MS. KASSNER: 5330(d)(1), I believe. Of Title XXI  
19 which I confess is not a Title I often consult.

20 THE COURT: Right. You probably don't stray outside  
21 of Title XVIII.

22 Okay. Here we go, 5330.

23 And did you say it was -- which subpart of 5330?

24 MS. KASSNER: I believe it's (d)(1).

25 THE COURT: Oh, here it is. Yes, it is.



## CHARGE CONFERENCE

498

1           Okay. So it uses all these words, transmission of  
2 currency, funds, or value that substitutes for currency. I  
3 mean, so I actually don't know why we just don't do that. But  
4 your preference, I guess -- and I'm referring to the  
5 Government -- is just to use the word fund instead of  
6 currency, even though all of them are included?

7           Why don't we use the whole definition.

8           MS. KASSNER: Yeah, that's the other suggestion. I  
9 think either one is fine.

10           The other suggestion would be currency, funds, or  
11 other value that substitutes for currency or some variant on  
12 that. I think any of that that will be fine, Your Honor.

13           THE COURT: Yeah, Mr. Singer, I think if we want to  
14 stay true to the statute, why don't we just use what's in 31  
15 United States Code, Section 5330(d)(1)(A), and that it  
16 literally refers to currency, funds, or value that substitutes  
17 for currency, and then add a sentence that BitCoin qualifies  
18 as -- here's the question, currency or funds.

19           MR. SINGER: I'm sorry, which section of 53 --

20           THE COURT: 5330(d)(1)(A), definitions. And  
21 specifically, the definition of money transmitting business,  
22 subpart A which basically says a money transmitting business  
23 provides -- it has a number of different things -- but  
24 currency exchange or money transmitting or remittent services,  
25 et cetera, et cetera.

CHARGE CONFERENCE

499

1 MR. SINGER: So how much of the language of  
2 (d)(1)(A) would you include?

3 THE COURT: So if you look just midway through the  
4 subpart A paragraph where it says, and starts, Any other  
5 person who engages as a business in the transmission of  
6 currency, funds, or value that substitutes for currency.

7 So all I'm proposing is that we insert after,  
8 currency, in our current instruction, the terms, funds or  
9 value that substitutes for currency.

10 MR. SINGER: Okay. So the instruction would read --

11 THE COURT: So while you're looking at that up --

12 MR. SINGER: So a money transmitting business is a  
13 business which, for a fee. Is that still how it's going to  
14 read?

15 THE COURT: Yes. Accepts, currency, funds, or the  
16 value that substitutes for currency or value that substitutes  
17 for currency. No, the.

18 MR. SINGER: For transfer within or outside the  
19 United States?

20 THE COURT: Correct.

21 MR. SINGER: That's fine.

22 THE COURT: Then the additional sentence will read  
23 something to the effect of, I advise you that BitCoin  
24 qualifies under the law as, and then the question is currency  
25 or funds or both? I'm asking you, folks.

CHARGE CONFERENCE

500

1           In the case law, does it say that BitCoin is  
2       considered currency, as you suggested, Mr. Singer, or funds,  
3       as the Government has suggested.

4           MS. KASSNER: Your Honor, the case law cause  
5       discusses it in the context of funds because 18 U.S.C. Section  
6       1960 only uses the word funds, and so I think it's fine to be  
7       over-inclusive, but I think it's accurate to say that BitCoin  
8       qualifies as a fund.

9           THE COURT: Okay. So the proposal would be then, I  
10      advise you -- and this is a new sentence after the one we were  
11      just discussing -- I advise you that BitCoin qualifies under  
12      the law as a fund or funds?

13          MS. KASSNER: Funds.

14          THE COURT: Funds, plural.

15          Mr. Singer any objections to that?

16          MR. SINGER: No.

17          THE COURT: All right. So we'll make those two  
18      additions.

19          Does the Government have anything else?

20          MS. KASSNER: No, Your Honor.

21          THE COURT: Okay. Mr. Singer, you said you had a  
22      few objections.

23          MR. SINGER: I do. And some are repeating  
24      objections that I've put in my earlier letter to the Court  
25      objecting to some of the Government's language.

CHARGE CONFERENCE

501

1 THE COURT: All right.

2 MR. SINGER: And the jury was not here, so I took my  
3 mask off.

4 THE COURT: That's fine. I did the same.

5 I mean, if you're worried about, whatever, exposure,  
6 that's still --

7 MR. SINGER: Worry, I worry all the time. We all  
8 worry. But I'm willing to take that risk.

9 THE COURT: Tell me the first page.

10 MR. SINGER: Page 13, section 0.

11 THE COURT: Section 0, undercover agent.

12 MR. SINGER: The first sentence reads that, you have  
13 heard testimony from an undercover agent from --

14 THE COURT: Yup. We'll correct that typo.

15 MR. SINGER: From undercover agent. And then this  
16 is a part that I'm objecting to, who were employed by the  
17 Government to investigate the defendant.

18 That's not accurate. They were employed by the  
19 Government to conduct investigations. The way this reads --

20 THE COURT: Hold on. Why don't we just change it to  
21 employed by the DEA?

22 So you have heard testimony from an undercover agent  
23 who was employed by the DEA, period.

24 MR. SINGER: Actually, it's more accurate undercover  
25 agents -- actually, there was only one uncover.

CHARGE CONFERENCE

502

1 THE COURT: Right.

2 MR. SINGER: From an undercover who was employed by the  
3 DEA.

4 THE COURT: Yes. I don't think I need to --

5 MR. SINGER: -- to investigate the defendant.

6 THE COURT: Yeah. I don't think I need to say that.  
7 The Government, certainly, is going to make that argument,  
8 because there was testimony that they did -- and I think,  
9 Mr. Singer, you want to argue this too -- target your client  
10 in particular, based on his advertisements. But that's  
11 argument. So I don't need to say that.

12 MR. SINGER: I get that. My concern, as I read it,  
13 is it sounds as though the specific reason that they were  
14 employed by the Government was to investigate the defendant,  
15 and that simply is not accurate. That's part of their job,  
16 conducting investigations. They did investigate the  
17 defendant, but it's a subtle difference.

18 THE COURT: They have other responsibilities, okay.  
19 So we'll say that you have heard testimony from an  
20 undercover agent who was employed by the Drug Enforcement  
21 Administration.

22 MS. KASSNER: So the Government has no objection to  
23 that. I would just keep it plural because they sometimes were  
24 on the phone, Special Agent Liefke and Special Agent O'Kain,  
25 and when they were on the phone, Special Agent O'Kain was

CHARGE CONFERENCE

503

1 acting uncover. It's up to Your Honor --

2 THE COURT: But to be clear, only O'Kain was the  
3 undercover. Liefke was his team member and did surveillance,  
4 right?

5 MS. KASSNER: Yes. Except for when Special Agent  
6 O'Kain called him on the phone, and said that comment, the  
7 other three keys --

8 THE COURT: He's not acting, really, as an  
9 undercover or representing himself. I don't want to confuse  
10 the jury, because the only one who said I was working  
11 undercover was O'Kain.

12 This strikes me as a very minor sentence.

13 MS. KASSNER: Whatever Your Honor thinks is clearer.  
14 It's not a legal objection, it's just whatever you think is  
15 clearer.

16 THE COURT: Let's just stick with the one because  
17 really I think we're referencing O'Kain acting in this  
18 undercover capacity. I understand what you're saying that  
19 Liefke played a part on the other end of the phone, but he  
20 wasn't technically acting undercover.

21 And I actually don't know or don't remember if it  
22 was testified to by O'Kain that the defendant could hear.

23 MS. KASSNER: It was --

24 THE COURT: It was, on speaker as opposed to --  
25 because I know he heard the undercover as part of the

## CHARGE CONFERENCE

504

1 conversation.

2 MS. KASSNER: Special Agent O'Kain did say he  
3 thought the defendant could hear. I don't think that's really  
4 that relevant. I think the bigger part is how the jury  
5 perceives the undercover. I think it if you think it's easier  
6 to say Special Agent O'Kain, that's fine.

7 THE COURT: Or just one undercover. Let's just  
8 refer to the uncover in the singular.

9 Okay. What else, Mr. Singer, about that paragraph  
10 or anywhere else?

11 MR. SINGER: Nothing else with regard to that  
12 paragraph.

13 I will move to Page 15, letter R, evidence pursuant  
14 to lawful procedure. I object to that charge. I think it's  
15 unnecessary. It's not an argument that has been or that I  
16 intend to make on behalf of the defendant, and I think that  
17 all it does is pats the Government on the back for following  
18 rules. I don't think the Court should be engaged -- there's  
19 no need for the Court to give this instruction. Why would  
20 anybody think that there was anything improper about the  
21 procedures used that the Government records matters, uses  
22 undercover. It's not an issue here and they highlight it  
23 simply to say, Government, you did everything according to the  
24 law, I don't think the Court should be taking sides in that  
25 way.

CHARGE CONFERENCE

505

1 THE COURT: All right. You feel like it's an  
2 attaboy?

3 MR. SINGER: Yes.

4 THE COURT: I'm not going to remove of that. I  
5 think it's good to avoid people's concerns about privacy and  
6 whether or not the Government was allowed to do what they did.  
7 So mostly, as a preventive measure, I'm going to give that  
8 instruction, which is pretty standard and dispels any notion  
9 or hidden concern the juror numbers might have about whether  
10 the Government was spying on people unlawfully.

11 I mean, I understand that you're not going to  
12 arguing it, but I think in this day and age, it's not  
13 unrealistic to think that people do have that concern. So I  
14 overrule that objection, but you've preserved it.

15 MR. SINGER: I will move to Page 21.

16 THE COURT: All right.

17 MR. SINGER: The second paragraph at the top that  
18 begins, In order to sustain its burden of proof.

19 THE COURT: Right.

20 MR. SINGER: I object to the inclusion of that  
21 paragraph.

22 I think the elements of the charge and the  
23 description of those elements is sufficient to inform the jury  
24 of what the Government is required to prove, and the examples  
25 that the Court puts into this proposed charge, is -- should be



## CHARGE CONFERENCE

506

1 argument by the Government and should not be part of the  
2 Court's charge.

3 Not required that you make any express affirmative  
4 statement to the defendant. I mean, you're telling them that  
5 what is required is that the defendant believed that the  
6 property was the proceeds of illegal activity. That's what  
7 the element is, that's what the statute calls for, and that's  
8 what the element is, and then to break that down further, to  
9 say, well, the Government doesn't have to do this, but they  
10 could do this, it's invading their province. It's a place for  
11 the Government -- that the Government can properly and  
12 appropriately make argument about that. But again, it's the  
13 Court inserting itself into the issue, and this is truly one  
14 of the critical issues in the case. I don't think it's the  
15 Court's job to do that.

16 THE COURT: So I'm going to overrule that objection  
17 also. This particular instruction is similar to what is  
18 instructed with respect to conspiracy, for example, where we  
19 often say to the jury, conspiracies are often secretive,  
20 there's rarely a written agreement, or words to that effect,  
21 because the jury has never encountered these sort of matters  
22 before, so illegal conspiracies are, by their nature, secret  
23 which is one of the things they always tell the jury, but  
24 rather, they can, as they often do in their formal life, infer  
25 from circumstances and actions of people that some agreement

## CHARGE CONFERENCE

507

1 has been reached. I think this is very similarly. And quite  
2 honestly, I think in that paragraph, the only potentially  
3 unnecessary or invasive, as you say, sentence, is the first  
4 one, because the latter part of that paragraph really states  
5 what they do need to know. And I don't suggest to them  
6 specifically what they consider, but I tell them that they  
7 have -- that they should decide whether, from all the  
8 circumstances, a reasonable person would make the inference  
9 that the proceeds were from illegal activity. But I think  
10 it's important to dispel the notion that the jury might have  
11 that somehow there has to be some express affirmation or  
12 affirmative statement, as this instruction says, that hey,  
13 this is proceeds of illegal activity. So I do find it's akin  
14 to other instructions we give to the jurors who don't normally  
15 deal with, somewhat, illicit conduct that isn't spoken about  
16 explicitly or overtly so that they understand that they can  
17 still find that the defendant had the requisite knowledge,  
18 even if it wasn't stated to him in express terms.

19 So I'm going to leave that in, but again, your  
20 objection is noted.

21 MR. SINGER: Well, can I ask the Court to, perhaps,  
22 consider removing the first sentence, then and simply  
23 instructing the jury that in order to sustain its burden of  
24 proof on this element, and then jump to the second sentence,  
25 the Government must prove that the law enforcement made the

## CHARGE CONFERENCE

508

1 defendant aware of circumstances from which a reasonable  
2 person would infer and on and on, and that just takes the  
3 first sentence out. That is, informing the jury fully as  
4 you've indicated what needs to be done here.

5 THE COURT: No. I mean that's, I guess, what I was  
6 trying to say to you, that I think that first sentence would  
7 be the potentially objectionable one, if there is one. But I  
8 said I think for the reasons I've said before is that because  
9 this is an area that the jury is less familiar with, they may  
10 well wonder whether or not it's required that the plaintiff  
11 say -- plaintiff, sorry -- that the undercover say, I'm  
12 involved in drug dealing and these are my proceeds.

13 So again, I think it is necessary, just as we do in  
14 other context, especially when it comes to illegal  
15 conspiracies, to say some kind of explicit expression of the  
16 illegality is not necessary with respect to the proceeds.

17 So I am denying even that request. Okay. But  
18 again, you have your objection.

19 MR. SINGER: We've moved to Page 22.

20 THE COURT: Mm hm.

21 MR. SINGER: I scrolled pass myself.

22 The first full paragraph beginning, In determining  
23 whether the defendant believed that the property.

24 I am objecting to that paragraph. Again, I think it  
25 is invading the province of the jury. I think it's certainly

## CHARGE CONFERENCE

509

1 appropriate for argument by the Government if they choose to  
2 make that argument. But I don't think it's for the Court to  
3 inject itself into that issue.

4 THE COURT: Right. Now this is a little trickier  
5 because I think it's really a legal question. It's a  
6 conscious avoidance instruction.

7 In other words, again, it's letting the jury know  
8 that they may not necessarily have to find that he knew that  
9 the proceeds were from narcotics trafficking, but rather,  
10 whether or not he deliberately closed his eyes to it. So if  
11 you're objecting that the standard is not appropriate, namely  
12 a conscious avoidance kind of standard, that, I would want to  
13 see some case law on. But I don't recall that this was  
14 raised -- and let me take a quick look. I know it was the  
15 Government's proposed instruction.

16 This is an instruction that has been used before, to  
17 be sure, in the case -- and it was approved by the Second  
18 Circuit in *United States versus Nektalov*, N-E-K-T-A-L-O-V, 461  
19 F.3d 309, a decision from 2006. But it is the Conscious  
20 Avoidance Doctrine. So I don't know if you're objecting to  
21 the application of that doctrine or simply how that's worded.  
22 But the doctrine itself has been upheld as appropriate in  
23 cases like this involving guilty knowledge.

24 So what are you arguing, Mr. Singer?

25 Do you believe that it's not appropriate to give a

## CHARGE CONFERENCE

510

1 conscious avoidance instruction?

2 MR. SINGER: Well, the element is not so much  
3 knowledge, as what the defendant actually believed. The  
4 Government has to establish that the defendant actually  
5 believed that the purported proceeds were from narcotics  
6 trafficking.

7 THE COURT: But do you have a case? Because as I  
8 said, *Nektalov* actually approved this kind of conscious  
9 avoidance instruction.

10 MR. SINGER: I do not have a case to present to the  
11 Court at this time, no.

12 THE COURT: All right. So does the Government want  
13 to be heard on this?

14 MS. KASSNER: Very briefly, Your Honor. The  
15 Government is relying on the *Nektalov* case which was approved  
16 by the Second Circuit in 2008. And it deals specifically  
17 with --

18 THE COURT: I think it's 2006, but it doesn't  
19 matter.

20 MS. KASSNER: I think the original case was 2006,  
21 but I believe -- regardless, Your Honor. I think that it  
22 talks about money, conducting financial transactions with the  
23 proceeds of narcotics trafficking and deliberately and  
24 consciously avoiding confirming that fact. I think it's  
25 almost identical to the situation we're discussing here. So I

## CHARGE CONFERENCE

511

1 think it's appropriate to include it and I think it's  
2 consistent with the current case law.

3 THE COURT: Right. Let me also note that *Nektalov*  
4 made the point of saying this instruction would be appropriate  
5 only when a defendant asserts the lack of some specific aspect  
6 of knowledge required for conviction, and secondly, the  
7 appropriate factual predicate for the charge exists. IE, that  
8 there is evidence such that a rational juror could reach that  
9 conclusion beyond a reasonable doubt that the defendant was  
10 aware of a high probability of the fact in dispute and  
11 consciously avoided confirming the fact, and that is precisely  
12 the situation we have here. So I am going to include the  
13 instruction based on *Nektalov* and the plain applicability of  
14 that decision to this case and to the defense in this case.  
15 So it's both as to the requirements for money laundering and  
16 the defense that's being asserted here which is lack of  
17 knowledge or belief.

18 MR. SINGER: Okay. So let me now dig into that  
19 paragraph and get a bit pickier.

20 THE COURT: All right. Give it a go.

21 MR. SINGER: The next to last sentence beginning,  
22 however, if you find that the defendant actually believed that  
23 the proceeds involved in the charge transactions were not the  
24 proceeds of narcotics trafficking, he may not be convicted.

25 While that is a true statement, it is not

## CHARGE CONFERENCE

512

1 sufficient. It's not the defendant doesn't need to establish  
2 that he actually believed that the proceeds were not the  
3 proceeds of narcotics trafficking. The Government has to  
4 prove the opposite. And so the way this is worded it suggests  
5 that the defense has some burden of establishing that he  
6 actually believed, I would suggest adding, however, if you  
7 find that the defendant actually believed that the proceeds  
8 involved in the charge transactions were not the proceeds of  
9 narcotics trafficking, or if you are not convinced beyond a  
10 reasonable doubt that he actually believed that the proceeds  
11 involved were not the proceeds of narcotics trafficking, he  
12 may not be convicted. I think it more accurately states what  
13 the law is otherwise --

14 (Continued on the following page.)  
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1 (Continued.)

2 THE COURT: Now, it misstates it. The problem is  
3 you are now making an affirmative requirement that you find  
4 actually believed as opposed to consciously avoided. That's  
5 the whole point. The paragraph says, If you find they  
6 consciously avoided knowing the truth. And I know that  
7 knowledge and belief, there's some daylight in between them or  
8 if you say that second part or I added that that would be very  
9 confusing or directly conflicting with the first part.

10 Now, I understand what you're saying about that  
11 particular sentence, the "however" sentence suggesting that  
12 the defendant has an affirmative duty to prove that he  
13 actually believed, but I think when read in context, it's  
14 really trying to say you can find he had the requisite  
15 knowledge based on conscious avoidance, but if you find that  
16 he actually believed that the proceeds were not from narcotics  
17 trafficking, you cannot convict him.

18 MR. SINGER: Can't both things be true? Can't you  
19 actually believe and also a finding be made that you  
20 consciously avoided which should have been obvious to you?

21 THE COURT: No.

22 MR. SINGER: If he avoided learning it and as a  
23 result of consciously avoiding it, he actually believed --

24 THE COURT: No, no. You're thinking of consciously  
25 avoiding as I put my fingers in my ears and pretend I don't



## Charge Conference

514

1 hear you, as opposed to he actually had reason to believe it  
2 and he chose not to accept or -- I don't know how to explain  
3 it, but there isn't really a difference between believing it  
4 and consciously avoiding it.

5 In other words, conscious avoidance suggests that he  
6 understood it to be true, but still acted with -- it's  
7 interesting0.

8 MR. SINGER: What if the jury is uncertain on this  
9 issue. What if the jury is uncertain on whether he  
10 consciously avoided it. This language would suggest that to  
11 find the defendant not guilty you have to find that he  
12 actually believed --

13 THE COURT: Well, we can re-word it this way:  
14 However, if you find that the Government has failed to prove  
15 beyond a reasonable doubt that the defendant consciously  
16 avoided -- now here is a tricky word, consciously avoided,  
17 believing or -- consciously avoided and learning I guess is  
18 the best way to say it that the proceeds involved in the  
19 charged transactions were the proceeds of narcotics  
20 trafficking he may not be convicted.

21 MS. KASSNER: Your Honor, I will point out -- I'm  
22 scratching my head because the sentences do appear earlier in  
23 the paragraph. It says, Guilty knowledge may not be  
24 established by demonstrating the defendant was merely  
25 negligent, foolish or mistaken. However, if you find beyond a

## Charge Conference

515

1 reasonable doubt that the defendant acted with a conscious  
2 purpose to avoid learning about the source of the proceeds  
3 involved in the charged transactions, then this element may be  
4 satisfied.

5 I feel like if we just reword that sentence and put  
6 it in the negative and then also the negative, I'm not sure  
7 what more we're adding if that makes sense.

8 THE COURT: I understand what you're saying. The  
9 weird thing that has been made clear to me is the word  
10 consciously avoiding because I -- conscious avoiding --  
11 consciously avoiding learning about something to me suggests  
12 something akin to putting your fingers in your ears as opposed  
13 to hearing the words and still intellectually not wanting to  
14 believe it or draw the conclusion that's obvious. And that's  
15 what I think conscious avoidance is about; because the  
16 defendant deliberately closed his eyes to what would otherwise  
17 have been obvious to him.

18 The Government is going to argue, yes, he heard the  
19 undercover say all of these things that were indicative of the  
20 drug -- the money being drug proceeds, yet he chose not to  
21 believe it. That's essentially what conscious avoidance  
22 means.

23 That's why I'm saying, Mr. Singer, you can't  
24 actually say he didn't believe it. You can't actually say one  
25 believes it yet consciously avoided it. The point is if

## Charge Conference

516

1 you're consciously avoiding it, you're refusing to believe it  
2 in some way.

3 So that's why I think we can't add the sentence that  
4 you want -- how about this: However, if you find beyond a  
5 reasonable doubt that the defendant acted with a conscious  
6 purpose to avoid learning about or believing that the source  
7 of the proceeds involved in the charged transaction -- wait,  
8 that doesn't actually help them. Wait a second.

9 MS. KASSNER: I think the sentence before it really  
10 does answer this, Your Honor; guilty knowledge may not be  
11 established by demonstrating the defendant was merely  
12 negligent, foolish or mistaken as to his belief. We could add  
13 that? That's really the point. It's saying it -- a mistaken  
14 belief, you would not be guilty of conscious avoidance. It's  
15 if you -- after the conscious purpose to avoid learning, then  
16 you are guilty I think? Maybe it belongs there. Guilty  
17 knowledge may not be established by demonstrating that the  
18 defendant was merely negligent, foolish or mistaken as to his  
19 belief about the source of the proceeds, something like that.

20 THE COURT: And then --

21 MS. KASSNER: And then it would mirror the sentence  
22 that follows because it says, to avoid learning about the  
23 source of the proceeds.

24 So if we put that part in the sentence before maybe  
25 we could strike the sentence that's been flagged later all

## Charge Conference

517

1 together.

2 THE COURT: Right, but I think then it creates a  
3 gross imbalance because there's really only one sentence that  
4 suggests a contrary narrative, if you will, because you have  
5 then three sentences dedicated to explaining how conscious  
6 avoidance could satisfy this element and only one phrase or  
7 one sentence that says how it wouldn't. I do agree that we  
8 should say it was merely negligent, foolish or mistaken as to  
9 his belief, although it's really as to his nonbelief, isn't  
10 it?

11 So why would you add the word believe to that  
12 sentence? Guilty knowledge may be not be established by  
13 demonstrating that the defendant was merely negligence,  
14 foolish or mistaken as to his belief.

15 MS. KASSNER: Belief about the source of the  
16 proceeds.

17 THE COURT: Well, no, believe that the proceeds were  
18 not from drug trafficking. I don't actually even like that  
19 sentence now that I'm looking at it further. I do think maybe  
20 we could change this a bit, at least to shorten it. What I  
21 would suggest almost is take out the sentence that begins  
22 guilty knowledge and the next sentence -- because the learning  
23 about part suggests to me that you just exempted yourself from  
24 the room or something as opposed to -- I think what this does  
25 really get at is he had all the evidence before him but chose

## Charge Conference

518

1 to ignore it as opposed to I left the room every time they  
2 talked about something illegal.

3 So the conscious learning about it is poorly phrased  
4 to me. Or conscious avoidance of learning about something  
5 because I think it suggests, like I said, a different concept  
6 and then, maybe if we jump then to the next sentence -- if you  
7 find beyond a reasonable doubt that he was aware of a high  
8 probability that the charged transactions involved the  
9 proceeds of narcotics trafficking, et cetera, et cetera and  
10 acted with deliberate disregard. And then we just have to  
11 find a better sentence for the "however" sentence. And then  
12 end with that. And delete the last sentence. I think there's  
13 almost too much discussion about an arguably watered down --

14 MR. SINGER: And I would also --

15 THE COURT: An arguably watered down knowledge  
16 requirement.

17 Go ahead, Mr. Singer.

18 MR. SINGER: I also think that narcotics trafficking  
19 should be illegal narcotics trafficking.

20 THE COURT: Well, narcotics trafficking is used  
21 throughout and I think it's presumptively illegal. I don't  
22 think we have to keep saying that. It's used in this entire  
23 instruction. You know, I don't think the jury for a moment  
24 will be confused because we say earlier on that the specified  
25 unlawful activity is narcotics trafficking. That's what it

## Charge Conference

519

1 is, what is alleged so I don't think there's going to be any  
2 confusion on that. I want a replacement sentence for the  
3 however sentence: However, if you find that the Government  
4 has failed to prove beyond a reasonable doubt. And then just  
5 recite the same language that the defendant deliberately  
6 closed his eyes to what would have been obvious to him, then  
7 he may not be convicted or would have been obvious to a  
8 reasonable person or something like that.

9 I think we need to address what is a legitimate  
10 concern that the defendant has an obligation to prove that he  
11 believed it or just maybe that he acted with conscious  
12 avoidance.

13 We could say this: However, if you find that the  
14 Government has failed to prove by a preponderance of the  
15 evidence that the defendant consciously avoided -- no, that  
16 the defendant acted with conscious avoidance of the high  
17 probability that the charged transaction involved the proceeds  
18 of narcotics trafficking, he may not be convicted. I think  
19 that -- it's the flip side of the sentence beforehand.

20 Government?

21 MS. KASSNER: So I'm having a little bit of a hard  
22 time following what's in and what's out.

23 THE COURT: So here is how it would work. First  
24 sentence in determining remains the same. Next sentence  
25 guilty knowledge comes out. The next sentence after that,

## Charge Conference

520

1 however, if you find beyond a reasonable doubt comes out. We  
2 then jump down to the sentence if you find beyond a reasonable  
3 doubt that the defendant was aware of a high probability that  
4 the charged transactions involved the proceeds of narcotics  
5 trafficking and that the defendant acted with deliberate  
6 disregard of the facts, you may find that the defendant acted  
7 with the belief necessary to satisfy this element.

8           However, if you find that the Government has failed  
9 to prove beyond a reasonable doubt that the defendant acted  
10 with conscious avoidance of the high probability that the  
11 charged transactions involved the proceeds of narcotics  
12 trafficking, you -- he may not be convicted. And the only  
13 hesitation I have is because obviously they could find that he  
14 knew and this conscious avoidance stuff is not relevant so, I  
15 would hope that they understand that if they find that he just  
16 knew that this wouldn't undercut that finding.

17           But I think that that sort of balances out the  
18 instruction and then we would delete the last sentence as well  
19 just as unnecessary: I mean we could word it shorter. We  
20 could say, failed to prove beyond a reasonable doubt that the  
21 defendant closed his eyes to the high probability, et cetera,  
22 et cetera.

23           MR. NAVARRO: Your Honor, I had a little bit of a  
24 hard time following it as well but one concern is that when  
25 you read it just now you used the term conscious avoidance and

## Charge Conference

521

1 I'm not sure that term is defined above.

2 THE COURT: That is true. Consciously avoided. We  
3 could not do that. That's why I suggest just maybe closed his  
4 eyes to the high probability or we could say that the  
5 defendant was not aware of the high probability. So if the  
6 Government has failed to prove beyond a reasonable doubt that  
7 the defendant was aware of a high probability and then go from  
8 there.

9 MR. NAVARRO: Your Honor, would this make sense to  
10 see this in writing and send you something later tonight with  
11 the proposed language and we can resolve it tomorrow because  
12 it is a little hard to follow on our end.

13 THE COURT: I do not find it hard but then again I'm  
14 thinking about it in my head. We can do it very easily. I  
15 think I've landed on the last iteration which is that that  
16 sentence which is now going to be the last sentence that  
17 begins however, the one that Mr. Singer is concerned about;  
18 the actually believed sentence, okay. Instead of that, it  
19 will read however, if you find that the Government has failed  
20 to prove beyond a reasonable doubt that the defendant was  
21 aware of a high probability that the charged transactions  
22 involve the proceeds of narcotics trafficking -- so this is  
23 mirroring the language in the sentence before -- then he may  
24 not be convicted.

25 I mean, I left out the part about deliberately



## Charge Conference

522

1 disregarded, I guess. That's what I would propose but if you  
2 guys have another proposal, that's fine.

3 Mr. Singer. I'm not sure if you're following --

4 MR. SINGER: No, I am, Judge, I've objected to the  
5 whole charge and I will wait to see the final language that  
6 the Court puts together.

7 THE COURT: Listen, we'll just put it into a revised  
8 charge. You'll have time to look at it in the morning and let  
9 me know what you think. We'll come up with something that  
10 addresses the concern that Mr. Singer raises, but I know it  
11 doesn't resolve your objection to this entire instruction, but  
12 just to break this down into two parts which is if you're  
13 objecting as I think you are, Mr. Singer and Ms. Sahli to the  
14 conscious avoidance instruction overall. I overrule that  
15 objection based on *Nektalov*.

16 But if you're objecting to particular language in  
17 the instruction, I am partially agreeing with you and trying  
18 to come up with some other language and am going to propose a  
19 revised version of this instruction so as not to suggest any  
20 burden on the defendant to prove that he actually believed  
21 that the proceeds were not from narcotics trafficking and also  
22 to create a more balanced instruction that's also shorter.  
23 Okay?

24 MR. SINGER: Next, Your Honor, a very minor point on  
25 page 23 --

## Charge Conference

523

1 THE COURT: So my law clerk actually has written it  
2 out so we'll print it out for you and you can take a look and  
3 we can discuss it tonight if you want.

4 Go ahead, Mr. Singer.

5 MR. SINGER: On page 23, again this is very minor it  
6 says, in order for you to find the defendant guilty of the  
7 crime charged in Count Two, the Government must prove beyond a  
8 reasonable doubt each of the following four elements but  
9 there's only three.

10 THE COURT: Okay, yes. That was a change we made,  
11 yes, three elements. We've corrected that on page 23.  
12 Anything else?

13 MR. SINGER: On page 24 of the first element money  
14 transmitting business.

15 THE COURT: Is this different than what we already  
16 fixed?

17 MR. SINGER: Yes.

18 THE COURT: Okay.

19 MR. SINGER: A business -- the sentence the third  
20 sentence, a business is a commercial enterprise that is  
21 regularly carried on for a fee or profit. I think that  
22 accurately it is a commercial enterprise that is regularly  
23 carried on for a profit. A fee is one matter -- one manner in  
24 which a company may have earned a profit, but there are others  
25 and I think the correct definition is that it's a commercial

## Charge Conference

524

1 enterprise carried on for a profit and by adding "fee" to it  
2 because the term "fee" is in the term money transmitting  
3 business as well, I think you're adding --

4 THE COURT: Redundancy.

5 MR. SINGER: Well, it's a redundancy because yes,  
6 fee is -- fee is one way that a company earns a profit. There  
7 are otherwise. It can be by speculation. It can be by  
8 markups on goods that are being sold. There's a variety of  
9 ways to make a profit. A fee is just one of them and you're  
10 highlighting the one that's in your next definition and that's  
11 relevant to the facts of this case. And so I think it's  
12 not -- it doesn't properly belong there. It should read  
13 simply it's a commercial enterprise that is regularly carried  
14 on for a profit.

15 THE COURT: Does the Government's object to removing  
16 fee in that sentence?

17 MS. KASSNER: Yes, Your Honor. We're searching now  
18 for the source of the definition, but I think that it's  
19 misleading to say it's regularly carried on for a profit. You  
20 can lose money and still run a business. I think it's  
21 misleading and I think the term "fee," these were, I believe,  
22 from the Sands instructions but also we're searching now to  
23 see where in the United States Code this definition is from.

24 Your Honor, we're concerned it adds this extra  
25 requirement that the Government shows in business was carried

## Charge Conference

525

1 on for a profit or to make a profit. I think it's misleading  
2 and confusing for the jury.

3 MR. SINGER: Well, the fact that a business is  
4 attempting to make a profit doesn't necessarily mean that it's  
5 going to, but a commercial enterprise is one that's operating  
6 to make a profit. That's the idea behind it. It's not done  
7 to earn a fee. It's done to earn a profit.

8 MS. KASSNER: I think the idea is that it charges  
9 money for its services. I think that's what the fee is  
10 referring to.

11 THE COURT: Honestly I think the only reason I would  
12 consider removing it is because the next definition for money  
13 transmitting involves charging a fee. I don't know which way  
14 it cuts it because it suggests to me that the jury is going to  
15 have to address that issue no matter what. But I do think  
16 it's not entirely correct, Mr. Singer that a business should  
17 be described -- I mean, I understand what you're saying that a  
18 fee is one way to make a profit, but I don't know if it's  
19 accurate to simply say businesses are operated to make a  
20 profit and that's how you define a business. It does  
21 introduce some notion of intend to make money, you know,  
22 about -- above your costs, I guess, and that's irrelevant for  
23 this definition because even a failing business or even one  
24 when -- the intent to actually make money is irrelevant to  
25 whether it's a business or not and I think that's the most

## Charge Conference

526

1 salient part of this discussion because under the statute, you  
2 know, I think in theory they don't care what your intent is in  
3 running it. The point is you conduct regularly something  
4 that's commercial because you make people pay for the service.  
5 You know, whether you do it to make a profit or because you  
6 enjoyed money transmitting is not really what makes it a  
7 business.

8 MR. SINGER: That is a definition of a business --

9 THE COURT: You say that, but I don't think the  
10 statute defines it unfortunately. Maybe people in business  
11 don't anticipate making a profit. That's why you say it's --  
12 that defines a business, I'm not sure that's true. What makes  
13 something a commercial business? It's certainly something  
14 offered to the public and in exchange -- it could be a  
15 bartering system, I guess, right and I think that was sort of  
16 your point which is fee is not the only way one operates but  
17 I'm not sure making a profit is the definition of a commercial  
18 business.

19 MR. SINGER: Well, the Government's request to the  
20 Court included this language a business is a commercial  
21 enterprise that is regularly carried on for profit.

22 THE COURT: But fee for profit.

23 MR. SINGER: No, just fee.

24 THE COURT: No, fee was added by the Court at the  
25 Government's request.

## Charge Conference

527

1 MS. KASSNER: Your Honor, he's correct.

2 MR. SINGER: For a profit on page 13 of their  
3 requested changes.

4 THE COURT: Government, should we take it out  
5 because since at the time you didn't think it was necessary  
6 either.

7 MS. KASSNER: So, Your Honor, the defense is correct  
8 in the Government's proposal it does say a business is a  
9 commercial enterprise that is regularly carried on for a  
10 profit. I will say now that the topic has been raised,  
11 though, I am concerned a bit about the confusion that's  
12 possible if any argument is going to be made that because he  
13 didn't profit, it's not a business.

14 THE COURT: Again, its intent to profit or set up  
15 for that purpose. We're going to take out fee or from that.  
16 I don't think quite honestly this matters at all. The idea is  
17 that it's a regularly carried out activity that has a  
18 commercial purpose and I think you can argue to the jury that  
19 clearly the defendant was trying to make money and a lot has  
20 been made by your agents about how much more he charged than  
21 other, more publicly available services like this.

22 So we're going to take out fee or in that  
23 instruction.

24 Mr. Singer, anything else?

25 MR. SINGER: I've run out. That's it.

## Charge Conference

528

1 THE COURT: All right, good. Fida, can we give  
2 copies of that one instruction --

3 THE COURTROOM DEPUTY: I did already.

4 THE COURT: Folks, take a quick look at that and see  
5 if that resolves the issue. Although I note that the defense  
6 still has their objection to it wholesale.

7 MS. KASSNER: Your Honor, the Government reviewed  
8 the proposed change to the paragraph on the top of page 22.  
9 This looks fine from the Government's perspective.

10 THE COURT: Okay.

11 Mr. Singer, aside from your standing objection to  
12 the instruction as a whole about conscious avoidance.

13 MR. SINGER: I would agree that this language is  
14 better than the way it was originally drafted testified.

15 THE COURT: Are you objecting to the language at all  
16 because you can preserve your objection.

17 MR. SINGER: No, no.

18 THE COURT: But you're still objecting to the  
19 inclusion of a conscious avoidance in this instruction?

20 MR. SINGER: Yes.

21 THE COURT: I think that resolves everything. We  
22 will send out a track change revised version and a clean copy  
23 so you can take a look and make sure we've transcribed  
24 everything correctly. As I said to the jury, you will start  
25 your closings at 9:30 and then I will instruct them right

## Charge Conference

529

1 afterwards and I imagine they'll get the case before noon. Do  
2 you have a sense of how long your summations will be?

3 MS. KASSNER: I'm going to try to speak slow, Your  
4 Honor, so I'm hoping maybe 45 or 50 minutes, but --

5 THE COURT: Are you doing the initial closing and  
6 rebuttal?

7 MS. KASSNER: No, Your Honor. Ms. Diouf is doing  
8 the rebuttal so she can advise.

9 MS. DIOUF: Of course it will be contingent on  
10 defense counsel's closing, but probably not more than 20  
11 minutes.

12 THE COURT: You'll try to speak lower too.

13 MS. DIOUF: Absolutely.

14 THE COURT: Mr. Singer, do you have any estimate  
15 now.

16 MR. SINGER: How long was my opening?

17 THE COURT: You said 20 minutes and it was about 20  
18 minutes.

19 MR. SINGER: That's all.

20 THE COURT: I don't recall --

21 MR. SINGER: 30, 40 minutes, I would think that's.

22 THE COURT: I would think at least. Fair enough.

23 So I was trying to get some sense of when we'll expect the  
24 jury to get the case. Ms. Gonzalez will ask them what they  
25 want for lunch and I will ask them assume they get the case



## Charge Conference

530

1 before lunch they can deliberate over lunch or not but they  
2 have to agree on whether or not they want to do that.

3 MR. SINGER: Is it your practice to provide a  
4 written copy of the instructions to the jury?

5 THE COURT: One issue, yes. So let me explain what  
6 is going to go back to the jury. All of the exhibits that  
7 have been admitted will go back to the jury along with a set  
8 of the instructions, which I will tell them as I'm reading  
9 them to them so they don't try to furiously try to take notes.

10 We will also project on the overhead, as crummy as  
11 it is, the instructions as I read them so they can follow  
12 along. I will advise the jury as I did before or I will  
13 remind them as you see in the instructions that they can have  
14 portions of the transcript sent back to them. I did tell  
15 them, though, I think that any charts that you folks use in  
16 closing and I don't know if you plan to that weren't admitted  
17 as evidence won't go back with them. The Government made the  
18 request to have the indictment sent back to the jury and I'm  
19 not going to do that.

20 I never do because as I tell them it's just a  
21 charge. It's not evidence and I recapitulate for them the  
22 portions of the indictment that they need to know so you folks  
23 had requested that in your jury charges. Maybe that is a  
24 leftover from someone else's charges.

25 MS. KASSNER: I think that's a standard request,

## Charge Conference

531

1 Your Honor, but we didn't focus on it so that's fine.

2 THE COURT: You didn't have your heart set on it,  
3 but I'm denying it anyway. I think that's what we need to  
4 know. What will happen as soon as you're done closing and  
5 before we send everything back to the jury, Ms. Gonzalez is  
6 going to go over each side's exhibit list -- the defense  
7 doesn't have one, and make sure you both agree on which  
8 exhibits are admitted and what's going back to the jury. You  
9 will have to look at it and agree with her before she sends it  
10 back.

11 MR. NAVARRO: Your Honor, in light of the issue with  
12 the projector, is it possible to on hand the hard copy to the  
13 jurors and ask them not turn the page until you're ready?

14 THE COURTROOM DEPUTY: I think it's only the  
15 computer not the paper.

16 THE COURT: You're talking about the jury charge?

17 MR. NAVARRO: Yes.

18 THE COURT: Fida is right it seems when we use the  
19 ELMO and bad when we use the computer.

20 MR. NAVARRO: When I put the slips on the ELMO the  
21 first day it was difficult zoomed into even read them. I can  
22 try it now.

23 THE COURT: Let's try it right now. We'll go off  
24 the record.

25 MR. SINGER: How do you want to deal with the

Charge Conference

532

1 transcripts -- not the transcripts, the recordings?

2 THE COURT: Good question. We do need to send back  
3 a computer with them, a laptop.

4 We'll send a laptop back with them but somebody  
5 should have it to a flash drive or a USB or CD. I'll see if  
6 we still have a CD player. Can't you guys put it on to a  
7 flash drive.

8 MR. SINGER: It's 2022. It's hard to find a  
9 computer with a disk drive.

10 MS. KASSNER: In our office we are still a fan of  
11 CDs but we will bring a flash drive.

12 THE COURT: We're done. We'll see you tomorrow.  
13 You can leave your stuff here if you want.

14

15 (Matter adjourned.)

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I N D E XWITNESSPAGE**PATRICK O'KAIN,**

CONTINUED DIRECT EXAMINATION

BY MS. KASSNER

350

CROSS-EXAMINATION BY MR. SINGER

372

REDIRECT EXAMINATION BY MS. KASSNER

408

**ALLAN LIEFKE****415**

DIRECT EXAMINATION BY MS. DIOUF

**415**

CROSS-EXAMINATION BY MR. SINGER

**447**

REDIRECT EXAMINATION BY MS. DIOUF

**454****ROBERT TARWACKI**

DIRECT EXAMINATION BY MS. KASSNER

458

**THEODORE VLAHAKIS**

DIRECT EXAMINATION BY MS. KASSNER

466

E X H I B I T S

Government Exhibit 622

351

Government Exhibit 304

369

Government Exhibit 104

446

## ALL WORD INDEX

1

<p style="text-align: center;"><b>\$</b></p> <p><b>\$10,000</b> [1] - 476:3  <b>\$100,000</b> [4] - 357:18, 365:3, 425:11, 488:19  <b>\$133,190</b> [1] - 371:10  <b>\$2,000</b> [1] - 429:12  <b>\$25,000</b> [1] - 425:13  <b>\$3,000</b> [1] - 426:18  <b>\$3,342.33</b> [1] - 381:22  <b>\$30,000</b> [1] - 355:12  <b>\$40,000</b> [2] - 357:21, 488:19  <b>\$49,999</b> [1] - 360:23  <b>\$5,000</b> [2] - 435:18, 436:5  <b>\$7,000</b> [1] - 380:8  <b>\$7,114.57</b> [1] - 381:10  <b>\$75,000</b> [1] - 366:18</p>	<p><b>11th</b> [4] - 381:12, 383:18, 383:22, 396:12  <b>12</b> [4] - 434:2, 441:10, 441:17, 450:22  <b>1201</b> [1] - 451:3  <b>12:10</b> [1] - 353:13  <b>12:28</b> [1] - 362:11  <b>13</b> [9] - 409:14, 410:25, 411:5, 416:12, 429:8, 439:22, 441:23, 501:10, 527:2  <b>13.67287</b> [1] - 358:22  <b>13:05</b> [1] - 362:25  <b>14</b> [1] - 346:19  <b>147</b> [1] - 346:19  <b>15</b> [12] - 362:25, 364:11, 391:9, 391:16, 391:17, 391:18, 407:19, 414:3, 428:4, 431:15, 432:15, 504:13  <b>16</b> [1] - 364:11  <b>16,000</b> [1] - 431:15  <b>16:17</b> [1] - 355:5  <b>17</b> [1] - 428:25  <b>17:16</b> [1] - 355:6  <b>18</b> [1] - 500:5  <b>180</b> [1] - 470:2  <b>18:50</b> [1] - 365:7  <b>195</b> [1] - 346:21  <b>1960</b> [4] - 348:2, 495:6, 497:8, 500:6  <b>19:33</b> [1] - 365:7  <b>19CR386(PKC)</b> [1] - 346:3  <b>1:45</b> [2] - 456:6, 457:2  <b>1st</b> [3] - 359:14, 481:12, 481:19</p>	<p><b>21st</b> [2] - 383:11, 396:12  <b>22</b> [7] - 350:24, 360:4, 429:23, 443:10, 452:19, 508:19, 528:8  <b>225</b> [1] - 346:24  <b>228</b> [13] - 427:8, 427:25, 429:5, 429:6, 429:23, 439:16, 439:20, 441:10, 447:15, 450:21, 452:18, 453:20  <b>22:34</b> [1] - 366:8  <b>22:46</b> [1] - 393:3  <b>23</b> [5] - 435:3, 436:21, 522:25, 523:5, 523:11  <b>237</b> [1] - 436:6  <b>23:40</b> [1] - 366:23  <b>24</b> [5] - 351:24, 410:22, 434:15, 494:17, 523:13  <b>24-hours</b> [1] - 476:21  <b>242</b> [1] - 439:19  <b>243</b> [1] - 440:8  <b>249</b> [1] - 440:18  <b>24:24</b> [1] - 355:21  <b>24:52</b> [1] - 355:21  <b>24th</b> [5] - 392:10, 392:17, 392:23, 396:12, 402:16  <b>25</b> [4] - 366:15, 412:20, 430:25, 494:14  <b>26</b> [3] - 362:6, 404:12, 441:15  <b>27</b> [2] - 351:23, 412:24  <b>271</b> [1] - 346:15  <b>27:40</b> [1] - 356:14  <b>27:52</b> [2] - 391:21, 391:22  <b>27th</b> [6] - 390:14, 391:3, 396:12, 403:19, 404:10, 414:9  <b>28</b> [1] - 396:11  <b>28:02</b> [2] - 413:23, 413:25  <b>28:35</b> [1] - 356:14  <b>28th</b> [2] - 381:2, 383:4  <b>29</b> [1] - 435:5  <b>29K</b> [2] - 443:15, 453:8  <b>2:00</b> [1] - 482:21  <b>2:30</b> [1] - 490:20  <b>2K</b> [1] - 437:14</p>
<p style="text-align: center;"><b>/</b></p> <p><b>/-FPLT</b> [1] - 469:3  <b>/-RBGS</b> [1] - 469:4  <b>/PHUPB</b> [1] - 469:4  <b>/S-FS</b> [1] - 469:5</p>	<p style="text-align: center;"><b>2</b></p>	<p style="text-align: center;"><b>3</b></p>
<p style="text-align: center;"><b>1</b></p> <p><b>1</b> [5] - 352:13, 380:22, 428:20, 456:5, 456:13  <b>10</b> [6] - 393:3, 432:15, 433:2, 441:19, 442:9, 491:6  <b>100</b> [14] - 356:5, 356:24, 357:1, 357:2, 357:7, 357:9, 357:16, 360:12, 360:22, 361:1, 361:9, 364:21, 400:15  <b>100,000</b> [1] - 364:16  <b>101</b> [11] - 478:9, 478:11, 478:16, 478:17, 478:24, 479:5, 479:9, 479:18, 479:21, 481:8, 481:14  <b>102</b> [9] - 462:1, 462:7, 462:8, 462:11, 462:24, 463:2, 463:6, 463:10, 463:13  <b>103</b> [8] - 462:9, 462:16, 462:17, 462:20, 462:24, 463:2, 463:21, 463:24  <b>104</b> [4] - 446:1, 446:7, 446:12, 533:21  <b>105</b> [8] - 470:19, 471:1, 471:5, 471:11, 471:15, 471:19, 472:19, 474:4  <b>107</b> [10] - 470:2, 470:8, 470:9, 471:4, 471:22, 472:7, 475:19, 479:23, 481:10, 481:18  <b>11</b> [6] - 351:23, 381:19, 409:6, 433:10, 486:22  <b>1101</b> [7] - 370:6, 370:10, 370:14, 370:20, 371:1, 371:5, 380:13  <b>11050</b> [1] - 346:20  <b>11201</b> [2] - 346:16, 346:24  <b>11211</b> [1] - 346:21  <b>1160</b> [1] - 439:25  <b>11:15</b> [1] - 407:11  <b>11:27</b> [1] - 353:12  <b>11:30</b> [1] - 407:11</p>	<p><b>2</b> [6] - 426:18, 456:15, 471:18, 478:19, 479:6, 479:17  <b>20</b> [6] - 442:9, 449:20, 481:20, 529:10, 529:17  <b>2001</b> [2] - 481:12, 481:19  <b>2006</b> [3] - 509:19, 510:18, 510:20  <b>2008</b> [2] - 458:18, 510:16  <b>2009</b> [2] - 416:13, 466:12  <b>2017</b> [1] - 467:15  <b>2018</b> [26] - 350:21, 351:23, 370:3, 370:23, 373:1, 378:21, 381:2, 381:19, 383:4, 383:11, 383:14, 383:18, 390:14, 403:19, 408:18, 414:9, 416:2, 416:3, 416:24, 422:20, 422:22, 429:8, 431:1, 435:5, 486:22  <b>2019</b> [25] - 351:24, 352:11, 354:10, 358:21, 359:7, 360:4, 362:6, 362:15, 368:6, 370:3, 370:23, 372:17, 373:1, 374:1, 378:22, 392:10, 392:17, 410:22, 412:6, 425:4, 425:18, 426:13, 428:25, 441:15, 447:21  <b>2020</b> [2] - 481:13, 481:20  <b>2022</b> [2] - 346:7, 532:8  <b>20K</b> [2] - 435:10, 436:11  <b>20th</b> [1] - 481:13  <b>21</b> [4] - 350:21, 428:23, 442:24, 505:15  <b>21:45</b> [1] - 366:8</p>	<p><b>3</b> [3] - 381:15, 472:18, 478:20  <b>3,000</b> [2] - 381:21, 443:14  <b>3,600</b> [1] - 441:20  <b>3,960</b> [1] - 441:20  <b>30</b> [11] - 352:11, 354:10, 355:11, 358:21, 359:6, 362:15, 368:6, 374:1, 447:21, 477:18, 529:21  <b>30,000</b> [1] - 355:11  <b>304</b> [6] - 368:17, 368:20, 369:1, 369:4, 369:5, 533:20  <b>309</b> [1] - 509:19  <b>30th</b> [5] - 372:17, 375:4, 396:13, 396:25, 406:3  <b>31</b> [1] - 498:14  <b>32:40</b> [1] - 357:23  <b>335</b> [2] - 353:23, 354:5</p>

## ALL WORD INDEX

2

<b>33:04</b> [1] - 357:23 <b>33rd</b> [1] - 352:14 <b>340634</b> [1] - 442:3 <b>35</b> [3] - 353:20, 354:13, 482:21 <b>350</b> [2] - 453:19, 533:6 <b>351</b> [1] - 533:19 <b>369</b> [1] - 533:20 <b>372</b> [1] - 533:7 <b>39th</b> [1] - 444:23 <b>3:00</b> [1] - 431:11	<b>613</b> [2] - 358:24, 359:3 <b>621</b> [7] - 351:10, 351:15, 351:16, 351:17, 351:18, 352:2, 352:6 <b>622</b> [5] - 350:6, 350:15, 351:3, 351:4, 533:19 <b>623</b> [1] - 351:14 <b>65K</b> [1] - 435:7 <b>66</b> [1] - 428:22 <b>67</b> [1] - 429:23 <b>68</b> [1] - 430:19 <b>69</b> [1] - 431:6 <b>6:05</b> [1] - 359:14	<b>9:55</b> [1] - 434:22
<b>4</b>	<b>7</b>	<b>A</b>
<b>40</b> [4] - 357:2, 357:19, 357:20, 529:21 <b>408</b> [1] - 533:9 <b>415</b> [2] - 533:10, 533:11 <b>41:35</b> [1] - 412:18 <b>43:24</b> [3] - 404:13, 404:14, 404:15 <b>43:30</b> [1] - 412:18 <b>446</b> [1] - 533:21 <b>447</b> [1] - 533:12 <b>45</b> [3] - 379:18, 434:22, 529:4 <b>454</b> [1] - 533:13 <b>458</b> [1] - 533:15 <b>46-09</b> [1] - 433:8 <b>46/09</b> [1] - 430:7 <b>4609</b> [1] - 434:19 <b>461</b> [1] - 509:18 <b>466</b> [1] - 533:17 <b>47</b> [2] - 440:3, 441:22 <b>49,999</b> [2] - 360:13, 360:18 <b>4th</b> [1] - 346:21	<b>7</b> [2] - 380:22, 436:11 <b>711</b> [1] - 445:7 <b>712</b> [1] - 445:7 <b>716</b> [1] - 445:19 <b>718</b> [1] - 445:19 <b>72</b> [1] - 431:18 <b>73</b> [1] - 432:4 <b>74</b> [1] - 432:12 <b>75</b> [1] - 366:16 <b>753</b> [1] - 444:7 <b>754</b> [1] - 445:1 <b>76</b> [1] - 433:2 <b>77</b> [1] - 433:11 <b>78</b> [1] - 434:3	<b>a.m</b> [2] - 346:8, 493:24 <b>abbreviation</b> [1] - 418:20 <b>ability</b> [1] - 377:18 <b>able</b> [19] - 381:16, 390:12, 394:11, 394:16, 401:3, 402:13, 423:11, 425:18, 431:9, 447:10, 450:25, 464:2, 479:22, 480:6, 481:11, 481:17, 481:18, 481:22, 491:17 <b>absolutely</b> [2] - 354:20, 529:13 <b>accept</b> [1] - 514:2 <b>acceptance</b> [1] - 469:10 <b>Accepts</b> [1] - 499:15 <b>accepts</b> [3] - 494:22, 495:14, 496:19 <b>access</b> [2] - 469:4, 473:22 <b>accomplish</b> [1] - 467:22 <b>accomplishes</b> [1] - 467:23 <b>according</b> [2] - 472:7, 504:23 <b>account</b> [9] - 399:10, 444:16, 445:4, 470:15, 474:7, 474:13, 474:14, 474:25 <b>accurate</b> [9] - 350:20, 351:22, 401:23, 477:25, 500:7, 501:18, 501:24, 502:15, 525:19 <b>accurately</b> [8] - 370:21, 375:25, 391:1, 392:15, 461:5, 477:7, 512:12, 523:22 <b>Act</b> [6] - 466:14, 466:16, 466:18, 466:21, 467:12, 479:14 <b>act</b> [2] - 466:15, 487:13 <b>acted</b> [9] - 514:6, 515:1, 516:5, 518:10, 519:11, 519:16, 520:5, 520:6, 520:9 <b>acting</b> [6] - 423:24, 437:23, 503:1, 503:8, 503:17, 503:20 <b>actions</b> [2] - 361:13, 506:25 <b>activities</b> [5] - 473:19, 474:8, 477:3, 487:15, 489:11 <b>activity</b> [13] - 467:21, 469:1, 474:20, 475:13, 488:6, 488:7, 488:15, 506:6, 507:9, 507:13, 518:25, 527:17 <b>actual</b> [2] - 404:5, 411:17 <b>ad</b> [2] - 428:1, 429:11 <b>add</b> [6] - 495:7, 496:20, 498:17, 516:3, 516:12, 517:11 <b>added</b> [2] - 513:8, 526:24 <b>Adderall</b> [8] - 363:22, 364:1, 364:4, 364:6, 372:21, 412:7, 413:14, 487:21 <b>ADDERALL</b> [1] - 487:21 <b>adding</b> [4] - 512:6, 515:7, 524:1, 524:3 <b>addition</b> [2] - 435:25, 475:18 <b>additional</b> [2] - 452:9, 499:22 <b>additions</b> [1] - 500:18 <b>address</b> [14] - 347:17, 433:8, 444:22, 445:5, 445:17, 445:23, 466:20, 470:13, 472:11, 472:14, 493:20, 519:9, 525:15 <b>addresses</b> [1] - 522:10 <b>adds</b> [1] - 524:24
<b>5</b>	<b>8</b>	
<b>5</b> [4] - 358:14, 358:17, 428:20, 474:4 <b>50</b> [5] - 360:19, 362:8, 366:15, 428:3, 529:4 <b>50,000</b> [2] - 361:1, 361:2 <b>5030</b> [1] - 444:23 <b>507</b> [5] - 359:11, 359:13, 360:3, 362:5, 488:25 <b>50K</b> [2] - 436:10, 436:11 <b>53</b> [2] - 427:20, 498:19 <b>5330</b> [2] - 497:22, 497:23 <b>5330(d)(1)</b> [1] - 497:18 <b>5330(d)(1)</b> [1] - 497:12 <b>5330(d)(1)(A)</b> [2] - 498:15, 498:20 <b>5331</b> [1] - 497:17 <b>54</b> [1] - 429:6 <b>58</b> [1] - 436:7 <b>5:30</b> [1] - 489:19	<b>801</b> [2] - 409:5, 409:7 <b>803</b> [8] - 391:5, 391:7, 391:15, 391:19, 404:11, 413:22, 413:25, 414:3 <b>804</b> [3] - 486:20, 486:21 <b>806</b> [10] - 392:24, 393:1, 409:13, 410:24, 412:18, 412:19, 412:24, 487:4, 487:20 <b>806R</b> [1] - 393:1 <b>807</b> [3] - 352:23, 352:25, 488:9 <b>807JR</b> [1] - 354:1 <b>807R</b> [2] - 353:20, 354:8 <b>809</b> [3] - 362:21, 362:24, 489:6 <b>830</b> [1] - 414:2 <b>8:57</b> [1] - 430:10	
<b>6</b>	<b>9</b>	
<b>6</b> [3] - 346:7, 431:17, 436:11 <b>60</b> [1] - 439:20 <b>60K</b> [1] - 434:8 <b>61</b> [1] - 358:24	<b>90</b> [1] - 434:16 <b>902</b> [1] - 446:7 <b>902-4</b> [1] - 446:2 <b>96</b> [1] - 436:20 <b>97</b> [1] - 437:8 <b>99</b> [1] - 437:19 <b>9:00</b> [2] - 346:8, 493:24 <b>9:05</b> [1] - 353:5 <b>9:30</b> [3] - 493:6, 493:24, 528:25 <b>9:47</b> [1] - 353:6	

## ALL WORD INDEX

3

**adjourned** [1] - 532:15  
**Administration** [4] - 408:12, 411:18, 416:4, 502:21  
**admit** [6] - 350:23, 352:2, 368:25, 463:2, 471:11, 479:5  
**admitted** [21] - 351:3, 352:6, 358:13, 358:24, 359:10, 369:4, 371:1, 371:5, 380:24, 381:15, 427:11, 445:9, 445:10, 445:19, 446:7, 463:6, 471:15, 479:9, 530:7, 530:16, 531:8  
**advertisements** [1] - 502:10  
**advertising** [2] - 377:15, 377:18  
**advise** [6] - 426:6, 499:23, 500:10, 500:11, 529:8, 530:12  
**advised** [1] - 425:12  
**AF** [2] - 437:23, 438:5  
**affidavits** [2] - 416:23, 421:21  
**affirm** [2] - 457:17, 465:1  
**affirmation** [1] - 507:11  
**affirmatively** [1] - 384:3  
**affirmed** [1] - 415:11  
**afternoon** [12] - 384:14, 384:15, 441:21, 447:5, 447:6, 457:1, 458:6, 466:6, 466:7, 492:9, 492:23, 494:5  
**afterwards** [3] - 366:22, 439:3, 529:1  
**age** [1] - 505:12  
**agency** [1] - 423:10  
**Agent** [24] - 348:8, 349:20, 367:3, 367:4, 367:10, 374:3, 374:12, 415:4, 417:1, 418:6, 422:15, 423:16, 423:21, 423:24, 425:8, 430:16, 490:7, 495:24, 502:24, 502:25, 503:5, 504:2, 504:6  
**agent** [32] - 349:22, 357:11, 368:1, 373:24, 374:2, 374:10, 408:12, 411:19, 416:10, 416:11, 416:13, 416:20, 416:21, 417:15, 418:21, 421:18, 421:19, 424:4, 424:6, 425:12, 425:20, 425:22, 426:7, 438:15, 475:5, 475:12, 485:22, 501:11, 501:13, 501:15, 501:22, 502:20  
**agents** [10] - 378:2, 388:15, 421:14, 421:20, 448:5, 448:25, 449:4, 449:14, 501:25, 527:20  
**ago** [1] - 375:21  
**agree** [8] - 376:18, 379:3, 379:6, 517:7, 528:13, 530:2, 531:7, 531:9  
**agreed** [1] - 367:9  
**agreeing** [1] - 522:17  
**agreement** [2] - 506:20, 506:25  
**ahead** [16] - 350:3, 410:17, 411:3, 430:9, 431:17, 432:10, 433:2, 434:15, 438:24, 440:17, 442:9, 442:13, 444:11, 489:17, 518:17, 523:4  
**aid** [1] - 353:3  
**Aid** [1] - 409:5  
**Aided** [1] - 346:25  
**aids** [3] - 409:15, 409:18, 410:1  
**aim** [1] - 493:23  
**AKA** [1] - 479:19  
**akin** [2] - 507:13, 515:12

**aliases** [1] - 422:12  
**alike** [1] - 360:16  
**ALLAN** [3] - 415:17, 415:19, 533:10  
**Allan** [3] - 367:3, 415:4, 415:17  
**alleged** [2] - 488:23, 519:1  
**allow** [1] - 374:24  
**allowed** [1] - 505:6  
**allows** [1] - 473:7  
**almost** [4] - 476:20, 510:25, 517:21, 518:13  
**alone** [1] - 462:7  
**alternative** [1] - 491:1  
**Alternatively** [1] - 495:2  
**AMERICA** [1] - 346:3  
**amount** [12] - 361:1, 365:4, 370:17, 379:4, 389:18, 396:3, 397:17, 401:2, 425:6, 426:20, 449:21, 488:18  
**amounts** [9] - 357:6, 360:25, 364:16, 370:16, 370:21, 377:18, 426:22, 436:3, 436:4  
**Analysis** [1] - 417:19  
**analysis** [1] - 417:21  
**analyze** [1] - 417:19  
**and/-S** [1] - 469:3  
**announced** [1] - 367:17  
**answer** [3] - 361:16, 384:17, 516:10  
**answered** [4] - 389:3, 406:19, 407:1, 476:21  
**answering** [2] - 391:1, 392:14  
**ant** [1] - 449:19  
**anticipate** [1] - 526:11  
**antimoney** [8] - 466:16, 467:25, 468:2, 468:3, 470:6, 475:24, 476:15, 479:14  
**anyway** [1] - 531:3  
**apologies** [2] - 350:7, 354:22  
**app** [5] - 423:2, 423:4, 426:25, 427:15, 442:8  
**appear** [3] - 429:19, 438:8, 514:22  
**Apple** [13] - 450:16, 450:22, 451:9, 451:16, 451:18, 452:6, 452:10, 452:14, 453:3, 453:9, 453:15, 453:18, 454:9  
**applicability** [1] - 511:13  
**application** [1] - 509:21  
**apply** [2] - 459:21, 460:6  
**appreciate** [4] - 349:17, 490:13, 491:19, 492:15  
**approach** [3] - 354:19, 457:14, 464:22  
**approached** [1] - 442:15  
**appropriate** [7] - 509:1, 509:11, 509:22, 509:25, 511:1, 511:4, 511:7  
**appropriately** [1] - 506:12  
**approved** [3] - 509:17, 510:8, 510:15  
**April** [16] - 359:14, 360:4, 362:6, 362:15, 368:6, 372:17, 374:1, 375:4, 378:21, 396:25, 406:3, 412:6, 425:18, 428:25, 441:15, 447:21  
**area** [5] - 368:21, 417:4, 431:24, 458:12, 508:9

**arguably** [2] - 518:13, 518:15  
**argue** [7] - 349:8, 488:1, 489:10, 497:1, 502:9, 515:18, 527:18  
**argues** [1] - 489:13  
**arguing** [2] - 505:12, 509:24  
**argument** [16] - 348:21, 348:23, 348:24, 490:15, 491:18, 492:12, 495:23, 502:7, 502:11, 504:15, 506:1, 506:12, 509:1, 509:2, 527:12  
**arrest** [14] - 367:9, 367:10, 367:15, 367:16, 367:20, 367:21, 367:24, 372:18, 406:3, 425:18, 425:21, 425:22, 447:22, 448:6  
**arrested** [17] - 365:11, 365:18, 367:8, 367:18, 367:19, 368:2, 368:3, 375:18, 375:19, 394:5, 425:22, 426:1, 426:4, 426:7, 427:4, 449:7, 454:1  
**arrived** [1] - 449:5  
**arriving** [1] - 449:9  
**articulated** [1] - 390:13  
**Asian** [1] - 435:10  
**aside** [1] - 528:11  
**aspect** [2] - 387:17, 511:5  
**asserted** [1] - 511:16  
**asserts** [1] - 511:5  
**asshole** [1] - 442:11  
**assigned** [3] - 417:20, 458:14, 467:4  
**assist** [1] - 486:9  
**Assistant** [1] - 346:18  
**assume** [1] - 529:25  
**assumed** [1] - 403:9  
**ATMs** [1] - 438:2  
**attaboy** [1] - 505:2  
**attempting** [1] - 525:4  
**attention** [13] - 348:7, 357:9, 365:5, 378:3, 428:3, 428:22, 429:5, 429:22, 436:6, 436:20, 439:19, 441:9, 451:2  
**attorney** [1] - 484:4  
**ATTORNEYS** [1] - 346:14  
**attorneys** [3] - 483:14, 484:2, 492:23  
**Attorneys** [1] - 346:18  
**audio** [7] - 353:3, 353:10, 353:19, 409:21, 409:25, 410:2, 410:3  
**Audio** [21] - 353:7, 353:14, 355:7, 355:22, 356:15, 357:24, 363:3, 363:7, 365:8, 366:9, 366:24, 391:23, 391:24, 393:4, 393:5, 404:17, 413:2, 413:4, 414:5, 414:7  
**August** [7] - 378:21, 381:2, 381:24, 383:4, 396:11  
**AUSA** [1] - 411:3  
**available** [3] - 476:7, 476:9, 527:21  
**availing** [1] - 474:23  
**Avenue** [3] - 346:19, 432:2, 440:16  
**avoid** [7] - 357:15, 420:13, 505:5, 515:2, 516:6, 516:15, 516:22  
**avoidance** [19] - 509:6, 509:12, 510:1, 510:9, 513:15, 514:5, 515:15, 515:21, 516:14, 517:6, 518:4, 519:12, 519:16, 520:10, 520:14, 520:25, 522:14,



## ALL WORD INDEX

4

528:12, 528:19  
**Avoidance** [1] - 509:20  
**avoided** [12] - 511:11, 513:4, 513:6, 513:20, 513:22, 514:10, 514:16, 514:17, 515:25, 519:15, 521:2  
**avoiding** [8] - 510:24, 513:23, 513:25, 514:4, 515:10, 515:11, 516:1  
**aware** [19] - 366:4, 373:17, 374:13, 374:14, 374:21, 375:22, 376:1, 377:23, 442:23, 449:9, 486:13, 495:23, 508:1, 511:10, 518:7, 520:3, 521:5, 521:7, 521:21  
**awhile** [1] - 379:16

**B**

**bachelor's** [1] - 417:24  
**background** [3] - 417:22, 453:3, 460:10  
**backside** [2] - 362:13, 362:14  
**bad** [3] - 360:17, 496:24, 531:19  
**bag** [2] - 353:23, 425:6  
**balanced** [1] - 522:22  
**balances** [1] - 520:17  
**Bank** [8] - 444:16, 445:3, 466:14, 466:16, 466:18, 466:20, 467:12, 479:14  
**bank** [5] - 418:12, 466:15, 468:13, 470:15, 474:13  
**banking** [2] - 444:5, 458:21  
**bartering** [1] - 526:15  
**based** [20] - 361:10, 364:2, 377:20, 383:23, 385:9, 385:17, 398:10, 402:2, 410:7, 441:4, 443:4, 453:23, 464:2, 468:25, 474:24, 485:21, 502:10, 511:13, 513:15, 522:15  
**Based** [4] - 414:8, 459:7, 469:18, 481:21  
**basic** [2] - 472:9, 472:16  
**basis** [1] - 383:23  
**bathroom** [2] - 432:9, 433:14  
**BC** [1] - 442:1  
**became** [1] - 377:23  
**become** [1] - 444:19  
**becoming** [1] - 417:15  
**BEFORE** [1] - 346:12  
**beforehand** [1] - 519:19  
**begin** [2] - 422:14, 494:2  
**beginning** [8] - 347:24, 374:7, 395:23, 421:22, 479:6, 494:20, 508:22, 511:21  
**begins** [5] - 406:9, 414:2, 505:18, 517:21, 521:17  
**behalf** [5] - 482:1, 483:7, 491:18, 495:17, 504:16  
**behind** [2] - 473:2, 525:6  
**belief** [12] - 357:8, 393:21, 393:23, 511:17, 513:7, 516:12, 516:14, 516:19, 517:9, 517:14, 517:15, 520:7  
**believe,eight** [1] - 476:16  
**believes** [2] - 365:4, 515:25

**belong** [2] - 428:12, 524:12  
**belonged** [1] - 444:1  
**belongs** [1] - 516:16  
**below** [2] - 357:9, 488:19  
**beneficial** [1] - 367:23  
**best** [5] - 347:13, 347:18, 408:25, 412:3, 514:18  
**better** [5] - 374:3, 456:14, 472:5, 518:11, 528:14  
**between** [12] - 366:5, 376:22, 423:9, 428:6, 435:18, 438:25, 451:24, 452:6, 453:9, 513:7, 514:3  
**beyond** [18] - 484:25, 485:11, 485:16, 486:12, 511:9, 512:9, 514:15, 514:25, 516:4, 518:7, 519:4, 520:1, 520:2, 520:9, 520:20, 521:6, 521:20, 523:7  
**bi** [1] - 460:12  
**bi-yearly** [1] - 460:12  
**Big** [13] - 450:16, 450:22, 451:9, 451:16, 451:18, 452:6, 452:10, 452:14, 453:3, 453:9, 453:15, 453:18, 454:9  
**bigger** [1] - 504:4  
**binder** [6] - 354:22, 391:10, 391:12, 410:16, 410:24, 414:3  
**binders** [2] - 411:2, 412:19  
**birth** [3] - 371:16, 463:12, 479:20  
**bit** [19] - 353:13, 375:14, 376:20, 383:17, 400:4, 412:20, 412:21, 412:25, 420:9, 445:25, 467:16, 480:6, 485:21, 487:25, 511:19, 517:20, 519:21, 520:23, 527:11  
**bitch** [2] - 442:15, 442:18  
**Bitcoin** [79] - 348:3, 348:5, 348:9, 348:21, 349:3, 356:17, 358:3, 358:4, 358:20, 358:22, 360:13, 360:14, 361:3, 361:4, 368:5, 368:14, 370:16, 371:6, 371:9, 371:24, 372:2, 379:8, 379:11, 379:22, 380:4, 380:8, 380:9, 381:7, 382:4, 382:9, 382:15, 383:7, 383:25, 384:6, 390:7, 396:21, 397:1, 397:9, 397:23, 398:2, 398:10, 398:14, 399:5, 401:3, 413:16, 418:17, 418:19, 418:20, 422:18, 423:19, 426:8, 427:22, 428:7, 429:12, 432:15, 432:17, 432:18, 459:25, 460:3, 464:4, 469:14, 485:20, 485:21, 486:15, 488:5, 494:25, 495:6, 495:15, 495:24, 496:10, 496:21, 497:2, 498:17, 499:23, 500:1, 500:7, 500:11  
**Bitcoins** [4] - 356:23, 422:21, 428:18, 444:4  
**blew** [1] - 442:5  
**block** [1] - 358:4  
**blockchain** [3] - 398:11, 398:22, 399:8  
**blow** [4] - 471:19, 472:2, 473:14, 475:2  
**bluntly** [1] - 412:4  
**book** [1] - 354:21  
**books** [1] - 354:18  
**booming** [3] - 363:14, 406:12, 406:16

**borned** [2] - 378:10, 378:14  
**bottom** [6] - 354:6, 360:4, 409:6, 412:25, 446:18, 473:12  
**Boulevard** [6] - 430:7, 430:15, 433:9, 434:20, 440:4, 441:22  
**boxes** [1] - 474:1  
**break** [9] - 405:12, 407:10, 407:13, 407:19, 456:5, 456:7, 482:20, 506:8, 522:12  
**Bridge** [1] - 440:13  
**brief** [2] - 456:19, 489:22  
**briefly** [6] - 347:23, 454:18, 460:4, 490:7, 497:3, 510:14  
**bring** [9] - 401:3, 403:23, 413:11, 413:13, 434:8, 484:18, 489:16, 493:6, 532:11  
**broader** [1] - 368:21  
**Broadway** [1] - 346:21  
**broker** [1] - 468:13  
**Brooklyn** [5] - 346:6, 346:16, 440:11, 440:13, 440:15  
**brought** [4] - 356:1, 378:24, 411:10, 487:23  
**BSA** [4] - 478:18, 479:12, 479:13, 479:14  
**BTC** [15] - 418:19, 428:17, 428:20, 429:3, 430:4, 432:17, 434:6, 434:9, 434:11, 434:12, 434:14, 436:10, 440:1, 440:2, 441:19  
**bubble** [2] - 452:12, 452:13  
**bubbles** [4] - 428:12, 428:13, 453:2  
**bucks** [1] - 357:1  
**buddy** [1] - 365:11  
**build** [1] - 487:3  
**building** [1] - 475:7  
**buildings** [1] - 386:18  
**bullet** [1] - 488:17  
**bullet-proof** [1] - 488:17  
**bulletproof** [3] - 355:23, 356:1, 356:3  
**bums** [1] - 439:13  
**bunch** [1] - 427:21  
**bundles** [1] - 395:24  
**burden** [4] - 505:18, 507:23, 512:5, 522:20  
**bureau** [1] - 467:19  
**Bureau** [3] - 458:15, 458:17, 458:20  
**burner** [3] - 443:2, 443:5, 443:6  
**business** [114] - 363:13, 363:18, 364:24, 365:10, 383:7, 384:18, 385:15, 385:18, 386:1, 386:3, 386:5, 387:20, 394:22, 395:5, 400:22, 401:22, 401:24, 405:17, 405:22, 405:23, 406:1, 406:9, 406:16, 406:22, 407:2, 408:6, 408:9, 409:8, 409:10, 409:12, 410:19, 439:17, 440:24, 444:16, 446:8, 459:9, 459:12, 459:25, 460:20, 460:25, 461:10, 462:23, 468:15, 468:18, 468:24, 468:25, 469:2, 469:13, 469:20, 469:23, 469:25, 470:1, 470:2, 470:10, 470:12,



## ALL WORD INDEX

5

471:7, 472:10, 472:13, 472:14,  
472:16, 472:25, 473:3, 473:5, 473:9,  
473:19, 473:24, 474:10, 475:11,  
475:21, 476:12, 476:14, 477:3,  
477:12, 479:1, 481:19, 481:24,  
485:19, 486:16, 494:22, 495:13,  
495:14, 496:15, 496:16, 496:18,  
497:15, 497:16, 498:21, 498:22,  
499:5, 499:12, 499:13, 523:14,  
523:19, 523:20, 524:3, 524:20,  
524:25, 525:3, 525:16, 525:20,  
525:23, 525:25, 526:7, 526:8, 526:10,  
526:12, 526:13, 526:18, 526:20,  
527:8, 527:13

**Business** [1] - 471:4

**businesses** [9] - 373:2, 458:23,  
462:13, 468:23, 473:9, 474:20,  
476:23, 481:11, 525:19

**buy** [6] - 365:9, 407:4, 429:11, 434:9,  
434:12, 441:19

**buyer** [3] - 360:14, 361:4, 429:3

**buyers** [1] - 426:24

**Buying** [1] - 431:15

**buying** [5] - 375:6, 384:25, 431:14,  
432:15, 440:1

**BY** [34] - 346:16, 350:2, 352:8, 354:24,  
358:16, 359:2, 361:17, 363:8, 370:1,  
372:11, 400:2, 408:3, 415:23, 421:9,  
434:1, 443:23, 444:12, 445:12, 447:4,  
450:24, 452:21, 453:13, 454:20,  
458:5, 466:5, 481:6, 533:6, 533:7,  
533:8, 533:11, 533:12, 533:13,  
533:15, 533:17

**BY:EMILEE** [1] - 346:22

**bye** [2] - 437:4, 437:17

**C**

**Cadman** [2] - 346:15, 346:24

**California** [36] - 356:5, 356:8, 356:12,  
363:21, 364:3, 365:10, 366:1, 366:5,  
366:6, 366:21, 372:23, 373:2, 373:5,  
373:6, 373:10, 373:13, 373:15,  
373:22, 375:6, 375:11, 375:16,  
375:23, 376:2, 376:12, 376:15,  
376:17, 400:24, 404:19, 405:2,  
405:20, 409:2, 411:10, 486:18, 487:2  
**cameras** [4] - 386:18, 386:19, 387:1,  
439:11

**cancelled** [1] - 438:3

**cannabis** [13] - 363:19, 363:21,  
363:25, 365:10, 373:14, 375:6,  
375:10, 406:23, 406:24, 407:4, 486:17  
**cannot** [2] - 484:7, 513:17

**capacity** [4] - 367:19, 412:2, 423:25,  
503:18

**car** [20] - 355:23, 367:17, 368:13,  
386:13, 386:20, 387:1, 389:18, 392:6,  
393:14, 394:1, 394:4, 395:20, 398:5,  
398:23, 399:4, 399:16, 406:4, 437:16,

448:22, 488:16

**care** [2] - 360:15, 526:2

**cared** [2] - 395:11, 395:12

**career** [1] - 416:13

**careful** [2] - 420:8, 481:3

**carried** [9] - 523:21, 523:23, 524:1,

524:13, 524:19, 524:25, 526:21,

527:9, 527:17

**carrying** [1] - 425:6

**case** [43] - 357:12, 363:1, 367:7,

388:19, 407:14, 420:7, 421:5, 421:7,

421:14, 421:18, 421:19, 421:22,

424:9, 448:15, 456:8, 461:15, 461:18,

474:16, 477:20, 478:3, 483:3, 489:14,

490:23, 491:24, 492:5, 494:5, 500:1,

500:4, 506:14, 509:13, 509:17, 510:7,

510:10, 510:15, 510:20, 511:2,

511:14, 524:11, 529:1, 529:24, 529:25

**cases** [3] - 416:21, 416:23, 509:23

**cash** [33] - 355:2, 356:17, 356:21,

359:4, 368:8, 368:12, 370:17, 371:6,

371:8, 378:24, 379:21, 389:19,

395:24, 396:7, 396:21, 397:5, 397:11,

397:16, 399:12, 399:20, 422:18,

423:19, 427:23, 428:7, 428:17,

429:12, 439:25, 459:22, 459:25,

460:3, 464:4, 469:14

**cashers** [1] - 469:3

**cashing** [1] - 473:21

**casino** [1] - 468:13

**catching** [1] - 442:12

**caught** [1] - 389:9

**CAUSE** [1] - 346:11

**CD** [2] - 532:5, 532:6

**CDs** [1] - 532:11

**cell** [1] - 401:6

**cellphone** [3] - 443:3, 443:5, 443:6

**centered** [1] - 418:6

**certain** [11] - 373:6, 399:6, 467:23,

467:25, 468:16, 470:5, 470:6, 473:9,

475:25, 476:3, 479:16

**certainly** [9] - 399:3, 406:7, 487:18,

491:14, 491:22, 492:8, 502:7, 508:25,

526:13

**certificate** [1] - 446:16

**certification** [2] - 462:11, 462:20

**certifications** [1] - 459:4

**certified** [3] - 446:8, 459:6, 478:17

**cetera** [8] - 440:9, 495:9, 498:25,

518:9, 520:21, 520:22

**chain** [1] - 358:4

**chance** [1] - 440:5

**change** [8] - 382:4, 456:12, 494:24,

501:20, 517:20, 523:10, 528:8, 528:22

**changes** [2] - 374:13, 527:3

**changing** [1] - 496:15

**character** [3] - 385:24, 385:25, 411:25

**characterize** [1] - 468:25

**charge** [24] - 347:7, 347:18, 348:2,

416:23, 421:21, 489:12, 489:18,

490:17, 490:19, 491:6, 493:5, 495:6,

496:14, 504:14, 505:22, 505:25,

506:2, 511:7, 511:23, 512:8, 522:5,

522:8, 530:21, 531:16

**charged** [13] - 370:22, 394:5, 485:2,

514:19, 515:3, 516:7, 518:8, 519:17,

520:4, 520:11, 521:21, 523:7, 527:20

**charges** [4] - 494:12, 525:8, 530:23,

530:24

**charging** [4] - 348:2, 379:6, 489:22,

525:13

**chart** [1] - 370:15

**charts** [1] - 530:15

**chat** [1] - 360:1

**check** [5] - 380:10, 429:14, 469:2,

473:21, 473:25

**checked** [1] - 377:9

**checking** [3] - 444:16, 445:4, 456:3

**checks** [1] - 460:10

**chemistry** [1] - 418:1

**CHEN** [2] - 346:12, 347:2

**choose** [1] - 509:1

**chop** [1] - 356:10

**chopped** [2] - 402:10, 487:1

**chose** [7] - 388:5, 388:6, 388:8,

388:12, 514:2, 515:20, 517:25

**Circuit** [2] - 509:18, 510:16

**circumstances** [5] - 361:11, 408:15,

506:25, 507:8, 508:1

**cite** [1] - 486:19

**City** [2] - 417:17, 436:18

**city** [2] - 431:5, 431:11

**civil** [1] - 456:13

**clarification** [1] - 361:21

**clarify** [1] - 495:5

**clarifying** [1] - 364:14

**clarity** [3] - 366:19, 451:15, 479:13

**clean** [1] - 528:22

**clear** [11] - 348:3, 348:20, 348:23,

363:24, 388:20, 486:20, 487:20,

489:6, 490:7, 503:2, 515:9

**Cleared** [1] - 431:14

**clearer** [4] - 472:3, 483:22, 503:13,

503:15

**clearly** [3] - 375:2, 395:4, 527:19

**clerk** [2] - 456:21, 523:1

**click** [1] - 476:12

**client** [3] - 491:18, 491:22, 502:9

**close** [5] - 386:14, 410:16, 489:24,

490:4, 490:5

**closed** [5] - 509:10, 515:16, 519:6,

520:21, 521:3

**closer** [3] - 416:16, 466:23, 488:19

**closing** [9] - 490:15, 492:2, 492:3,

493:21, 493:25, 529:5, 529:10,

530:16, 531:4

**closings** [2] - 492:19, 528:25

**clothing** [1] - 422:6

**club** [2] - 384:20, 384:21

## ALL WORD INDEX

6

**cocaine** [4] - 401:14, 401:15, 401:18, 402:4  
**Code** [2] - 498:15, 524:23  
**coffee** [4] - 430:22, 433:14, 434:25, 435:1  
**coherent** [2] - 490:14, 491:18  
**coin** [1] - 439:25  
**CoinBase** [3] - 402:13, 428:21, 487:6  
**college** [1] - 487:1  
**College** [1] - 417:25  
**comfortable** [2] - 358:10, 406:7  
**coming** [7] - 361:22, 362:12, 363:18, 363:25, 364:1, 364:4, 440:12  
**comings** [1] - 424:22  
**comment** [2] - 494:12, 503:6  
**comments** [1] - 489:23  
**commercial** [11] - 523:20, 523:22, 523:25, 524:13, 525:5, 526:4, 526:13, 526:17, 526:20, 527:9, 527:18  
**commission** [1] - 370:18  
**commissions** [1] - 370:22  
**common** [1] - 402:2  
**commonly** [1] - 466:10  
**communicated** [1] - 426:23  
**communicating** [2] - 427:25, 451:7  
**communication** [1] - 425:8  
**communications** [3] - 377:1, 423:9, 454:13  
**companies** [4] - 459:8, 461:9, 469:19, 477:11  
**company** [2] - 523:24, 524:6  
**complaint** [1] - 491:23  
**completely** [2] - 411:25, 420:6  
**completes** [1] - 470:11  
**completing** [1] - 469:25  
**Compliance** [2] - 467:8, 467:9  
**compliance** [1] - 472:15  
**computer** [7] - 444:1, 444:3, 494:10, 531:15, 531:19, 532:3, 532:9  
**Computer** [1] - 346:25  
**Computer-Aided** [1] - 346:25  
**computers** [2] - 418:12, 449:24  
**COMR** [1] - 437:13  
**conceal** [2] - 486:8, 489:11  
**concept** [1] - 518:5  
**concern** [12] - 390:19, 392:5, 393:10, 394:16, 409:24, 490:25, 502:12, 505:9, 505:13, 519:10, 520:24, 522:10  
**concerned** [16] - 363:1, 389:7, 390:15, 390:21, 390:22, 393:13, 394:4, 394:10, 394:13, 487:10, 487:15, 487:17, 493:2, 521:17, 524:24, 527:11  
**concerns** [2] - 389:4, 505:5  
**conclude** [2] - 464:2, 481:22  
**conclusion** [2] - 511:9, 515:14  
**conclusions** [2] - 463:11, 463:22  
**conduct** [11] - 459:11, 460:19, 461:14, 462:22, 469:1, 469:22, 475:13, 477:19, 501:19, 507:15, 526:3

**conducted** [8] - 370:16, 396:21, 453:25, 461:12, 463:14, 477:14, 481:9, 495:9  
**conducting** [5] - 470:3, 473:8, 473:24, 502:16, 510:22  
**CONFERENCE** [1] - 346:11  
**conference** [11] - 347:7, 347:18, 348:2, 419:6, 420:21, 456:14, 489:18, 489:22, 490:17, 490:20, 493:5  
**confess** [2] - 495:20, 497:19  
**confirm** [4] - 354:8, 361:24, 372:1, 477:25  
**confirmation** [7] - 379:14, 398:8, 398:13, 398:14, 398:24, 399:4, 399:7  
**confirmations** [10] - 358:5, 358:6, 358:8, 398:11, 399:8, 399:21, 399:23, 400:3, 400:12, 400:21  
**confirmed** [2] - 398:6, 483:10  
**confirming** [2] - 510:24, 511:11  
**conflicting** [1] - 513:9  
**confuse** [1] - 503:9  
**confused** [2] - 476:18, 518:24  
**confusing** [2] - 513:9, 525:2  
**confusion** [3] - 348:12, 519:2, 527:11  
**connection** [3] - 459:4, 461:15, 477:20  
**conscious** [25] - 487:9, 509:6, 509:12, 510:1, 510:8, 513:15, 514:5, 515:1, 515:10, 515:15, 515:21, 516:5, 516:14, 516:15, 517:5, 518:3, 518:4, 519:11, 519:16, 520:10, 520:14, 520:25, 522:14, 528:12, 528:19  
**Conscious** [1] - 509:19  
**consciously** [18] - 510:24, 511:11, 513:4, 513:6, 513:20, 513:23, 513:24, 514:4, 514:10, 514:15, 514:16, 514:17, 515:10, 515:11, 515:25, 516:1, 519:15, 521:2  
**consequence** [2] - 491:22, 492:22  
**consider** [5] - 484:7, 486:11, 507:6, 507:22, 525:12  
**considered** [1] - 500:2  
**consistent** [4] - 363:18, 496:13, 496:22, 511:2  
**conspiracies** [3] - 506:19, 506:22, 508:15  
**conspiracy** [1] - 506:18  
**constitutes** [1] - 496:21  
**constitutional** [1] - 483:7  
**consult** [1] - 497:19  
**consumers** [1] - 459:18  
**contact** [5] - 422:25, 423:1, 423:13, 472:15, 476:18  
**contacted** [2] - 423:14, 442:17  
**contained** [1] - 427:17  
**contains** [1] - 452:13  
**contents** [1] - 476:25  
**context** [3] - 500:5, 508:14, 513:13  
**contingent** [1] - 529:9  
**continuation** [1] - 363:16  
**continue** [13] - 353:12, 354:23,

355:20, 356:13, 357:22, 360:4, 360:10, 360:11, 364:10, 365:6, 366:8, 413:24, 495:16  
**Continued** [11] - 369:8, 399:25, 400:1, 419:5, 420:22, 433:19, 455:10, 465:14, 480:8, 512:14, 513:1  
**CONTINUED** [2] - 350:1, 533:5  
**continued** [1] - 457:25  
**continuing** [2] - 388:19, 434:1  
**Continuing** [2] - 370:1, 481:1  
**contrary** [1] - 517:4  
**controlled** [5] - 364:4, 365:24, 408:17, 408:20, 495:9  
**Controlled** [1] - 417:19  
**controlling** [2] - 472:21, 473:5  
**controls** [1] - 472:24  
**convenience** [1] - 445:3  
**conversation** [13] - 358:2, 363:10, 366:20, 375:13, 405:25, 438:19, 441:25, 451:18, 451:19, 486:20, 487:5, 489:5, 504:1  
**conversations** [8] - 360:2, 376:12, 384:5, 436:1, 436:2, 438:25, 488:4, 488:17  
**convert** [1] - 397:11  
**convey** [2] - 388:3, 394:21  
**convict** [1] - 513:17  
**convicted** [7] - 511:24, 512:12, 514:20, 519:7, 519:18, 520:12, 521:24  
**conviction** [1] - 511:6  
**convince** [1] - 368:3  
**convinced** [1] - 512:9  
**cool** [1] - 432:6  
**Cool** [2] - 432:7, 433:17  
**copies** [1] - 528:2  
**copy** [5] - 446:5, 456:22, 528:22, 530:4, 531:12  
**cord** [1] - 481:3  
**corner** [3] - 352:13, 432:10, 437:10  
**Corp** [13] - 444:17, 444:18, 444:19, 444:22, 445:17, 445:23, 446:16, 462:22, 463:23, 463:25, 464:4, 481:17, 481:23  
**corporate** [3] - 472:12, 472:13, 473:1  
**corporation** [1] - 444:21  
**correct** [140] - 347:9, 349:2, 351:7, 351:8, 352:18, 354:8, 372:14, 372:18, 373:23, 373:24, 373:25, 374:8, 374:19, 375:6, 376:3, 377:2, 377:3, 377:5, 377:6, 377:12, 377:15, 377:17, 378:17, 379:9, 380:5, 381:2, 381:8, 381:9, 381:19, 381:22, 382:15, 382:19, 383:10, 383:12, 383:13, 384:7, 384:12, 384:19, 385:15, 385:16, 385:20, 385:23, 386:2, 386:6, 386:23, 387:8, 388:23, 389:6, 389:21, 390:8, 391:25, 392:4, 393:9, 393:16, 394:2, 394:8, 394:24, 395:2, 395:3, 395:11, 395:21, 395:25, 396:4, 396:7, 396:24, 397:5, 397:11, 397:17,

## ALL WORD INDEX

7

397:20, 398:3, 398:10, 398:19,  
398:20, 399:6, 399:24, 400:5, 400:18,  
401:5, 401:7, 401:8, 401:10, 401:13,  
401:16, 402:17, 403:1, 403:3, 403:13,  
403:18, 403:20, 404:1, 404:25,  
406:25, 407:6, 415:5, 432:19, 436:16,  
438:13, 447:9, 447:12, 447:17,  
447:20, 447:22, 448:4, 448:6, 448:9,  
448:18, 448:23, 449:1, 449:12,  
449:15, 449:17, 449:18, 450:8, 450:9,  
451:3, 451:5, 451:13, 451:19, 451:20,  
452:5, 452:10, 452:11, 452:14,  
452:24, 453:3, 453:4, 453:16, 453:21,  
454:4, 454:10, 454:14, 454:15, 497:9,  
497:10, 501:14, 523:25, 525:16,  
527:1, 527:7  
**Correct** [42] - 372:15, 377:13, 378:12,  
378:20, 379:17, 379:19, 381:6,  
381:11, 381:20, 381:23, 381:25,  
382:8, 382:10, 382:16, 383:6, 383:21,  
390:9, 392:8, 395:22, 396:1, 396:5,  
397:3, 397:6, 397:10, 397:18, 397:25,  
398:4, 399:18, 400:6, 400:14, 400:19,  
400:23, 401:1, 406:2, 406:6, 406:13,  
406:18, 406:21, 481:9, 483:12,  
484:10, 499:20  
**corrected** [1] - 523:11  
**correctly** [2] - 358:3, 528:24  
**corresponding** [1] - 474:1  
**cost** [1] - 407:4  
**costs** [1] - 525:22  
**counsel** [3] - 347:24, 348:20, 408:5  
**counsel's** [1] - 529:10  
**count** [5] - 364:17, 379:3, 379:4,  
437:6, 485:4  
**Count** [3] - 348:2, 494:16, 523:7  
**counted** [1] - 399:15  
**counter** [5] - 355:2, 364:18, 364:19,  
366:12, 487:11  
**counting** [5] - 387:3, 387:4, 389:19,  
390:7, 396:2  
**country** [2] - 349:4, 475:9  
**counts** [1] - 484:23  
**couple** [5] - 357:7, 405:12, 405:13,  
434:13, 488:8  
**course** [12] - 382:2, 402:9, 444:20,  
460:24, 471:7, 477:2, 479:1, 487:8,  
487:23, 489:1, 490:17, 529:9  
**COURT** [255] - 346:1, 347:4, 347:9,  
347:15, 348:14, 348:25, 349:6,  
349:10, 349:15, 350:3, 351:1, 351:3,  
351:11, 351:15, 352:4, 352:6, 352:24,  
353:2, 353:17, 353:22, 353:25, 354:6,  
354:10, 354:12, 354:17, 354:20,  
361:15, 362:22, 363:1, 363:6, 369:2,  
369:4, 369:6, 371:3, 371:5, 372:5,  
372:8, 374:17, 374:24, 380:13,  
380:15, 380:18, 391:7, 391:11,  
391:19, 391:22, 393:22, 396:14,  
396:19, 405:11, 405:15, 407:9,

407:17, 407:22, 409:17, 409:19,  
409:25, 410:9, 410:16, 411:1, 414:19,  
414:22, 414:24, 415:2, 415:5, 415:9,  
415:18, 416:15, 416:18, 417:9,  
417:11, 419:3, 420:2, 420:12, 420:15,  
421:2, 421:16, 422:4, 422:9, 427:10,  
427:13, 438:20, 438:24, 439:8,  
444:11, 445:9, 446:3, 446:7, 446:11,  
446:23, 447:1, 454:17, 455:5, 455:7,  
456:1, 456:4, 456:12, 456:21, 457:5,  
457:13, 457:24, 458:24, 459:1, 459:3,  
462:2, 463:4, 463:6, 464:10, 464:14,  
464:21, 465:13, 466:23, 467:1, 467:3,  
470:20, 470:22, 471:13, 471:15,  
471:25, 472:4, 478:10, 479:7, 479:9,  
479:24, 480:3, 481:2, 482:4, 482:7,  
482:9, 482:13, 482:16, 482:25, 483:5,  
483:9, 483:13, 483:20, 484:1, 484:5,  
484:11, 484:15, 484:18, 485:3, 485:8,  
485:25, 489:25, 490:4, 490:12,  
490:16, 491:5, 491:8, 491:11, 491:16,  
491:20, 492:12, 492:18, 493:3,  
493:11, 493:15, 494:9, 494:15,  
494:18, 495:7, 495:19, 496:1, 496:4,  
496:24, 497:6, 497:13, 497:17,  
497:20, 497:25, 498:13, 498:20,  
499:3, 499:11, 499:15, 499:20,  
499:22, 500:9, 500:14, 500:17,  
500:21, 501:1, 501:4, 501:9, 501:11,  
501:14, 501:20, 502:1, 502:4, 502:6,  
502:18, 503:2, 503:8, 503:16, 503:24,  
504:7, 505:1, 505:4, 505:16, 505:19,  
506:16, 508:5, 508:20, 509:4, 510:7,  
510:12, 510:18, 511:3, 511:20, 513:2,  
513:21, 513:24, 514:13, 515:8,  
516:20, 517:2, 517:17, 518:15,  
518:20, 519:23, 521:2, 521:13, 522:7,  
523:1, 523:10, 523:15, 523:18, 524:4,  
524:15, 525:11, 526:9, 526:22,  
526:24, 527:4, 527:14, 528:1, 528:4,  
528:10, 528:15, 528:18, 528:21,  
529:5, 529:12, 529:14, 529:17,  
529:20, 529:22, 530:5, 531:2, 531:16,  
531:18, 531:23, 532:2, 532:12  
**Court** [13] - 346:23, 500:24, 504:18,  
504:19, 504:24, 505:25, 506:13,  
507:21, 509:2, 510:11, 522:6, 526:20,  
526:24  
**court** [11] - 347:1, 347:19, 396:16,  
404:4, 417:13, 421:1, 459:1, 482:24,  
483:23, 483:25  
**Court's** [2] - 506:2, 506:15  
**Courthouse** [1] - 346:5  
**courtroom** [8] - 407:16, 407:21,  
415:12, 421:23, 457:4, 482:23,  
493:10, 494:8  
**COURTROOM** [21] - 380:24, 381:14,  
391:4, 391:6, 404:14, 407:15, 415:14,  
427:12, 446:5, 456:10, 457:3, 457:16,  
457:21, 464:25, 465:5, 465:8, 482:22,

493:9, 494:7, 528:3, 531:14  
**courts** [2] - 349:4, 495:5  
**cover** [13] - 354:3, 354:15, 356:7,  
363:16, 382:13, 394:23, 395:5,  
400:21, 412:2, 412:3, 423:23, 458:12,  
478:18  
**covers** [1] - 458:13  
**crazy** [1] - 353:25  
**create** [1] - 522:22  
**created** [3] - 462:25, 471:6, 478:25  
**creates** [1] - 517:2  
**credit** [1] - 468:13  
**Crime** [1] - 417:18  
**crime** [4] - 417:23, 485:13, 523:7  
**Crimes** [1] - 466:9  
**crimes** [1] - 485:1  
**CRIMINAL** [1] - 346:11  
**Criminal** [3] - 458:15, 458:16, 458:20  
**criminal** [4] - 368:4, 458:11, 459:5,  
488:15  
**critical** [1] - 506:14  
**CROSS** [4] - 400:1, 447:3, 533:7,  
533:12  
**cross** [7] - 348:8, 372:9, 372:10,  
408:4, 408:5, 413:25, 473:10  
**CROSS-EXAMINATION** [4] - 400:1,  
447:3, 533:7, 533:12  
**cross-examination** [4] - 348:8,  
372:10, 408:4, 408:5  
**crowd** [1] - 437:24  
**crummy** [1] - 530:10  
**cry** [1] - 442:15  
**cryptocurrency** [3] - 358:19, 459:22,  
469:14  
**cryptocurrencies** [1] - 418:6  
**cryptocurrency** [4] - 417:7, 418:13,  
418:14, 426:24  
**cultural** [1] - 384:25  
**culture** [1] - 402:3  
**curative** [1] - 420:4  
**cure** [1] - 420:16  
**currency** [40] - 348:9, 348:10, 418:2,  
418:9, 418:10, 418:14, 418:16,  
418:22, 425:7, 469:10, 469:11, 476:2,  
494:22, 495:3, 495:22, 495:24,  
496:19, 496:21, 497:2, 497:7, 497:9,  
498:2, 498:6, 498:10, 498:11, 498:16,  
498:17, 498:18, 498:24, 499:6, 499:8,  
499:9, 499:15, 499:16, 499:17,  
499:24, 500:2  
**current** [4] - 458:19, 467:7, 499:8,  
511:2  
**custody** [2] - 448:5, 448:8  
**custom** [2] - 385:7, 385:14  
**customer** [31] - 429:1, 429:9, 429:16,  
430:2, 430:12, 430:25, 431:8, 431:21,  
431:25, 432:5, 432:13, 432:21, 433:5,  
433:12, 434:4, 434:16, 434:21, 435:6,  
436:8, 436:14, 437:1, 437:19, 439:23,  
440:10, 440:18, 441:18, 441:24,

## ALL WORD INDEX

8

442:10, 442:25, 443:11, 460:15  
**customer's** [1] - 437:8  
**customers** [5] - 426:11, 435:21, 460:8, 460:16, 474:24  
**cut** [2] - 406:19, 407:2  
**cuts** [1] - 525:14  
**cyber** [1] - 417:5  
**cycled** [1] - 364:19

## D

**d**(1) [1] - 497:24  
**d**(1)(A) [1] - 499:2  
**dark** [8] - 359:16, 417:6, 418:25, 420:4, 420:6, 421:4, 421:7, 453:2  
**database** [3] - 463:15, 464:1, 476:22  
**date** [10] - 354:10, 371:16, 380:23, 397:2, 428:24, 429:7, 435:4, 441:14, 463:12, 479:20  
**dated** [1] - 410:22  
**dates** [4] - 351:5, 370:23, 481:12, 481:19  
**day-to-day** [1] - 380:5  
**daylight** [1] - 513:7  
**days** [4] - 390:16, 390:23, 392:3, 470:2  
**de** [1] - 420:16  
**DEA** [23] - 367:16, 373:24, 374:2, 374:3, 374:12, 377:23, 385:4, 385:10, 415:3, 416:3, 416:5, 416:9, 416:10, 416:11, 416:20, 416:25, 417:15, 417:17, 418:21, 485:22, 501:21, 501:23, 502:3  
**deal** [8] - 388:20, 425:13, 426:17, 430:17, 489:2, 489:8, 507:15, 531:25  
**dealer** [7] - 361:25, 382:14, 386:20, 386:25, 387:5, 468:14, 487:3  
**dealers** [7] - 386:14, 411:11, 411:15, 442:18, 442:20, 442:22, 489:3  
**dealing** [12] - 386:10, 387:8, 387:9, 387:18, 388:16, 408:15, 411:20, 411:23, 487:1, 487:18, 488:1, 508:12  
**deals** [2] - 439:2, 510:16  
**dealt** [1] - 435:10  
**December** [9] - 351:23, 381:12, 381:19, 383:17, 383:18, 383:22, 396:12, 430:25, 486:22  
**decentralized** [1] - 418:10  
**decide** [4] - 348:13, 488:3, 488:20, 507:7  
**decided** [3] - 378:2, 483:2, 483:18  
**deciding** [1] - 484:8  
**decision** [7] - 483:17, 483:21, 484:2, 492:23, 492:25, 509:19, 511:14  
**dedicated** [1] - 517:5  
**defendant** [210] - 346:7, 347:16, 350:19, 350:21, 351:6, 351:21, 351:23, 352:11, 353:11, 355:2, 355:8, 355:11, 355:13, 355:17, 355:23, 355:25, 356:16, 356:20, 356:22, 356:24, 357:5, 357:10, 357:13,

357:16, 358:2, 358:20, 359:4, 359:6, 360:1, 360:23, 361:3, 361:18, 362:6, 362:12, 362:13, 362:14, 362:16, 362:18, 363:13, 363:17, 363:19, 363:24, 364:7, 364:14, 364:15, 364:23, 365:9, 365:15, 365:17, 365:20, 365:21, 366:1, 366:4, 366:12, 366:15, 366:20, 367:1, 367:6, 367:8, 367:15, 367:18, 367:22, 367:24, 367:25, 368:3, 368:5, 368:9, 368:13, 368:24, 370:3, 370:16, 370:17, 370:18, 370:21, 370:22, 371:8, 371:11, 375:25, 377:17, 395:6, 409:9, 410:7, 410:14, 410:18, 411:8, 411:9, 412:6, 412:9, 412:12, 413:6, 413:8, 413:14, 413:15, 413:20, 414:8, 422:10, 422:14, 422:21, 422:23, 423:13, 423:14, 424:12, 424:15, 424:19, 424:25, 425:4, 425:9, 425:11, 425:15, 425:19, 425:23, 425:25, 426:1, 426:3, 426:6, 426:8, 426:14, 426:19, 426:23, 427:25, 428:6, 428:12, 429:10, 429:16, 429:20, 430:3, 430:15, 430:17, 430:20, 431:19, 432:20, 433:4, 433:16, 434:7, 434:14, 434:19, 435:8, 435:16, 435:20, 435:23, 436:2, 436:14, 436:17, 437:2, 437:24, 438:11, 438:14, 439:1, 439:5, 439:9, 439:16, 439:24, 440:9, 440:21, 440:23, 441:21, 442:3, 442:13, 442:17, 442:19, 444:21, 444:24, 453:6, 485:12, 487:9, 488:11, 501:17, 502:5, 502:14, 502:17, 503:22, 504:3, 504:16, 506:4, 506:5, 507:17, 508:1, 508:23, 510:3, 510:4, 511:5, 511:9, 511:22, 512:1, 512:7, 513:12, 514:11, 514:15, 514:24, 515:1, 515:16, 516:5, 516:11, 516:18, 517:13, 519:5, 519:10, 519:15, 519:16, 520:3, 520:5, 520:6, 520:9, 520:21, 521:5, 521:7, 521:20, 522:20, 523:6, 527:19  
**Defendant** [1] - 347:3  
**DEFENDANT** [8] - 346:19, 483:12, 483:18, 483:24, 484:3, 484:10, 484:14, 484:17  
**defendant's** [14] - 357:8, 359:15, 359:24, 360:5, 363:11, 367:16, 414:11, 424:22, 427:3, 427:16, 428:1, 428:16, 443:24, 489:1  
**defendants** [2] - 364:25, 423:22  
**defense** [21] - 347:24, 348:20, 408:5, 422:2, 483:3, 483:11, 484:21, 484:22, 487:11, 489:17, 493:7, 493:12, 493:13, 494:1, 511:14, 511:16, 512:5, 527:7, 528:5, 529:10, 531:6  
**define** [1] - 525:20  
**defined** [3] - 469:2, 469:9, 521:1  
**defines** [4] - 495:9, 497:14, 526:10, 526:12

**definition** [13] - 496:14, 496:15, 496:22, 498:7, 498:21, 523:25, 524:10, 524:18, 524:23, 525:12, 525:23, 526:8, 526:17  
**definitions** [1] - 498:20  
**degree** [2] - 417:24, 417:25  
**delay** [1] - 490:18  
**delete** [3] - 434:10, 518:12, 520:18  
**deleted** [2] - 359:23, 360:1  
**deliberate** [4] - 492:9, 518:10, 520:5, 530:1  
**deliberately** [5] - 509:10, 510:23, 515:16, 519:5, 521:25  
**deliberation** [1] - 490:22  
**deliberations** [3] - 490:24, 492:10, 494:3  
**demonstrating** [4] - 514:24, 516:11, 516:17, 517:13  
**denying** [4] - 485:8, 485:10, 508:17, 531:3  
**Department** [19] - 417:18, 436:18, 456:20, 457:12, 458:8, 459:13, 460:6, 460:9, 460:18, 461:4, 461:8, 462:11, 462:21, 464:6, 464:20, 466:9, 467:19, 481:24, 486:4  
**depiction** [2] - 350:20, 351:22  
**depository** [2] - 468:12, 474:19  
**DEPUTY** [21] - 380:24, 381:14, 391:4, 391:6, 404:14, 407:15, 415:14, 427:12, 446:5, 456:10, 457:3, 457:16, 457:21, 464:25, 465:5, 465:8, 482:22, 493:9, 494:7, 528:3, 531:14  
**deputy** [2] - 415:12, 456:13  
**describe** [9] - 353:9, 353:15, 357:10, 417:22, 424:19, 425:3, 427:19, 444:2, 476:13  
**described** [2] - 476:14, 525:17  
**describing** [1] - 356:20  
**description** [1] - 505:23  
**desire** [1] - 488:18  
**despite** [1] - 489:6  
**detail** [1] - 476:14  
**detected** [1] - 487:10  
**determined** [4] - 358:10, 367:7, 377:10, 378:13  
**determining** [3] - 378:10, 508:22, 519:24  
**devices** [4] - 427:6, 449:8, 449:20, 449:23  
**difference** [2] - 502:17, 514:3  
**different** [19] - 354:18, 354:21, 366:5, 375:15, 375:22, 384:10, 416:22, 418:18, 421:21, 427:21, 435:2, 439:11, 444:4, 449:23, 481:16, 498:23, 518:5, 523:15  
**difficult** [1] - 531:21  
**difficulties** [1] - 364:18  
**dig** [1] - 511:18  
**digital** [6] - 418:2, 418:9, 418:14, 418:16, 418:22, 447:13



## ALL WORD INDEX

9

**diligent** [3] - 479:22, 481:10, 481:17  
**dining** [3] - 426:2, 448:1, 449:11  
**DIOUF** [30] - 346:17, 415:3, 415:7, 415:23, 420:10, 421:9, 422:1, 422:11, 427:7, 438:23, 443:22, 443:23, 444:9, 444:12, 445:10, 445:12, 445:24, 446:9, 446:22, 446:25, 454:18, 454:20, 455:4, 456:3, 456:18, 456:24, 529:9, 529:13, 533:11, 533:13  
**diouf** [2] - 434:1, 529:7  
**Diouf** [1] - 421:8  
**direct** [5] - 394:19, 428:3, 451:2, 458:4, 490:8  
**DIRECT** [7] - 350:1, 415:22, 466:4, 533:5, 533:11, 533:15, 533:17  
**directed** [1] - 420:14  
**directing** [6] - 428:22, 429:22, 436:6, 436:20, 439:19, 441:9  
**Directing** [1] - 429:5  
**directly** [6] - 382:22, 385:2, 387:13, 415:15, 454:13, 513:9  
**directs** [1] - 490:5  
**dirty** [1] - 360:16  
**discredit** [1] - 489:4  
**discuss** [8] - 367:4, 385:12, 398:2, 482:18, 483:14, 483:16, 484:2, 523:3  
**discussed** [3] - 436:3, 483:6, 484:4  
**discusses** [1] - 500:5  
**discussing** [7] - 352:10, 355:9, 355:10, 436:4, 495:12, 500:11, 510:25  
**discussion** [7] - 398:1, 401:17, 411:22, 413:5, 414:8, 518:13, 526:1  
**discussions** [3] - 376:11, 376:16, 376:19  
**disguise** [2] - 486:8, 489:11  
**disk** [1] - 532:9  
**dismiss** [1] - 484:23  
**dispel** [1] - 507:10  
**dispels** [1] - 505:8  
**dispensaries** [4] - 373:15, 373:21, 374:7, 374:15  
**displayed** [1] - 368:22  
**dispute** [5] - 347:25, 348:5, 486:7, 496:5, 511:10  
**disregard** [6] - 420:5, 420:17, 421:3, 421:6, 518:10, 520:6  
**disregarded** [1] - 522:1  
**distribute** [1] - 408:23  
**DISTRICT** [3] - 346:1, 346:1, 346:12  
**District** [1] - 346:15  
**division** [1] - 467:5  
**docket** [1] - 380:15  
**Doctrine** [1] - 509:20  
**doctrine** [2] - 509:21, 509:22  
**document** [5] - 444:13, 446:15, 461:22, 478:5, 478:22  
**documentation** [1] - 475:10  
**documentation/address** [1] - 475:5  
**documents** [4] - 444:5, 445:13,

470:14, 476:13  
**dollars** [4] - 426:21, 435:25, 436:3, 436:15  
**done** [11] - 347:10, 388:23, 403:16, 405:13, 426:8, 492:13, 508:4, 525:6, 525:7, 531:4, 532:12  
**door** [2] - 386:14, 430:21  
**doors** [1] - 367:17  
**dot** [3] - 437:5  
**double** [1] - 437:17  
**double-parked** [1] - 437:17  
**doubt** [17] - 485:1, 485:11, 486:12, 511:9, 512:10, 514:15, 515:1, 516:5, 518:7, 519:4, 520:1, 520:3, 520:9, 520:20, 521:6, 521:20, 523:8  
**down** [16] - 362:5, 407:17, 414:25, 415:1, 432:14, 443:22, 445:24, 449:11, 455:7, 475:16, 482:12, 506:8, 518:13, 518:15, 520:2, 522:12  
**download** [2] - 427:15, 447:10  
**downloaded** [1] - 447:8  
**downtown** [1] - 440:20  
**draft** [3] - 456:22, 494:12, 528:14  
**drag** [1] - 379:15  
**draw** [3] - 357:9, 365:4, 515:14  
**drawers** [1] - 449:16  
**dress** [1] - 439:12  
**drive** [4] - 532:5, 532:7, 532:9, 532:11  
**driver's** [1] - 371:16  
**drives** [2] - 449:24, 449:25  
**driving** [1] - 432:23  
**dropped** [2] - 378:14, 382:9  
**Drug** [5] - 408:11, 411:18, 416:3, 416:6, 502:20  
**drug** [60] - 360:15, 361:5, 361:10, 361:24, 364:24, 375:1, 377:12, 377:24, 378:7, 382:14, 384:17, 385:8, 385:15, 385:18, 386:1, 386:3, 386:5, 386:9, 386:14, 386:20, 386:25, 387:5, 387:8, 387:9, 387:18, 388:16, 394:5, 401:21, 401:24, 408:6, 408:9, 408:13, 408:15, 411:11, 411:15, 414:13, 416:7, 417:20, 417:25, 442:18, 442:20, 442:22, 454:3, 454:14, 454:24, 486:14, 486:16, 486:24, 487:3, 487:18, 488:1, 488:6, 488:7, 489:1, 489:2, 508:12, 515:20, 517:18  
**drugs** [24] - 363:17, 382:14, 382:21, 383:5, 383:7, 383:8, 384:1, 384:7, 384:12, 384:16, 385:1, 387:21, 411:12, 411:15, 411:17, 411:20, 411:23, 412:1, 412:3, 412:5, 453:20, 454:22, 489:7  
**dude** [4] - 360:7, 360:13, 438:2, 442:15  
**Dude** [1] - 360:23  
**duly** [4] - 349:24, 415:19, 458:2, 466:2  
**During** [4] - 371:11, 411:14, 411:18, 425:22  
**during** [23] - 353:9, 353:15, 359:5,

363:9, 364:12, 366:10, 366:25, 367:12, 376:5, 376:8, 382:1, 384:12, 395:19, 400:7, 400:20, 423:21, 425:1, 425:20, 426:9, 438:14, 443:25, 444:18, 444:19  
**duty** [3] - 461:5, 477:7, 513:12

## E

**early** [4] - 456:5, 482:20, 493:3, 493:8  
**earn** [2] - 525:7  
**earned** [1] - 523:24  
**earns** [1] - 524:6  
**ears** [2] - 513:25, 515:12  
**earth** [1] - 456:23  
**easier** [5] - 432:23, 440:12, 495:4, 496:13, 504:5  
**easily** [1] - 521:14  
**East** [4] - 346:15, 352:13, 431:20, 431:23  
**East/Brooklyn** [1] - 346:24  
**EASTERN** [1] - 346:1  
**Eastern** [1] - 346:15  
**edit** [1] - 489:23  
**educational** [1] - 417:22  
**effect** [5] - 375:15, 387:2, 434:11, 499:23, 506:20  
**effectively** [1] - 414:13  
**effort** [1] - 487:3  
**efforts** [1] - 395:16  
**eight** [6] - 397:14, 428:21, 433:1, 436:23, 440:17, 443:14  
**either** [9] - 348:14, 388:18, 454:13, 463:19, 482:2, 485:4, 488:22, 498:9, 527:6  
**elaborate** [1] - 485:3  
**electronic** [5] - 398:23, 427:6, 449:8, 449:20, 449:23  
**electronics** [2] - 443:25, 453:24  
**element** [10] - 485:1, 494:16, 506:7, 506:8, 507:24, 510:2, 515:3, 517:6, 520:7, 523:13  
**elements** [5] - 485:14, 505:22, 505:23, 523:8, 523:11  
**elicit** [2] - 357:14, 467:21  
**Elmo** [1] - 480:2  
**ELMO** [2] - 531:19, 531:20  
**email** [3] - 466:22, 472:15, 476:21  
**employed** [9] - 416:2, 416:3, 501:16, 501:18, 501:21, 501:23, 502:2, 502:14, 502:20  
**employees** [1] - 477:10  
**encountered** [1] - 506:21  
**encrypted** [5] - 423:4, 423:7, 423:10, 423:12, 442:8  
**end** [14] - 347:12, 347:17, 362:25, 421:22, 452:23, 453:9, 490:17, 490:24, 491:13, 492:10, 495:8, 503:19, 518:12, 521:12

## ALL WORD INDEX

10

**End** [1] - 420:21  
**ended** [2] - 420:9, 493:17  
**ending** [1] - 364:11  
**enforcement** [8] - 417:16, 426:4, 466:22, 470:17, 473:8, 487:9, 487:16, 507:25  
**Enforcement** [5] - 408:12, 411:18, 416:3, 466:9, 502:20  
**engage** [3] - 459:8, 459:24, 469:19  
**engaged** [10] - 397:20, 453:15, 454:2, 461:9, 469:8, 473:20, 477:12, 485:19, 488:14, 504:18  
**engages** [3] - 469:13, 497:15, 499:5  
**engaging** [3] - 485:16, 487:17, 487:18  
**English** [1] - 476:16  
**English** [7] - 483:12, 483:19, 483:25, 484:4, 484:10, 484:14, 484:17  
**enjoy** [2] - 456:7, 494:4  
**enjoyed** [2] - 457:7, 526:6  
**enormous** [1] - 390:10  
**ensure** [3] - 370:20, 467:11, 468:4  
**entail** [1] - 466:19  
**enterprise** [7] - 523:20, 523:22, 524:1, 524:13, 525:5, 526:21, 527:9  
**enters** [5] - 349:14, 407:21, 415:8, 457:4, 493:10  
**entire** [10] - 361:11, 367:6, 400:7, 451:21, 451:23, 452:14, 458:13, 518:22, 522:11  
**entirely** [2] - 484:11, 525:16  
**entities** [8] - 460:19, 464:7, 473:1, 473:2, 478:23, 481:11, 482:2  
**entity** [2] - 469:8, 472:12  
**envelopes** [1] - 395:25  
**equivalent** [2] - 469:10, 469:12  
**erroneously** [1] - 496:10  
**ers** [1] - 469:3  
**especially** [3] - 354:22, 472:25, 508:14  
**ESQ** [5] - 346:16, 346:17, 346:17, 346:19, 346:22  
**essentially** [5] - 378:23, 384:24, 390:10, 393:10, 515:21  
**establish** [4] - 438:20, 484:25, 510:4, 512:1  
**established** [5] - 486:2, 514:24, 516:11, 516:17, 517:12  
**establishing** [2] - 470:2, 512:5  
**estimate** [1] - 529:14  
**et** [8] - 440:9, 495:9, 498:25, 518:9, 520:21, 520:22  
**ETA** [1] - 433:7  
**ether** [1] - 398:24  
**Ethereum** [1] - 418:18  
**evening** [4] - 347:7, 347:18, 491:3, 494:4  
**event** [1] - 434:9  
**eventually** [1] - 423:18  
**everywhere** [1] - 449:16  
**evidence** [47] - 347:11, 350:24, 351:4,

352:2, 369:1, 369:5, 371:1, 376:22, 378:6, 380:12, 387:5, 392:25, 409:16, 409:17, 409:18, 410:3, 417:20, 427:8, 444:6, 444:25, 445:6, 445:18, 446:1, 446:12, 447:13, 450:22, 452:18, 453:14, 454:2, 463:2, 471:11, 479:5, 482:18, 484:24, 485:10, 485:17, 486:2, 486:19, 489:10, 490:10, 493:12, 504:13, 511:8, 517:25, 519:15, 530:17, 530:21  
**Evidence** [2] - 417:21, 446:2  
**exact** [1] - 449:21  
**exactly** [5] - 357:17, 373:7, 442:1, 460:4, 490:9  
**Exactly** [2] - 394:13, 399:14  
**exam** [1] - 460:12  
**examination** [5] - 348:8, 372:9, 394:20, 408:4, 408:5  
**EXAMINATION** [17] - 350:1, 372:10, 400:1, 408:2, 415:22, 447:3, 454:19, 458:4, 466:4, 533:5, 533:7, 533:8, 533:11, 533:12, 533:13, 533:15, 533:17  
**examined** [4] - 349:25, 415:20, 458:3, 466:3  
**examiner** [1] - 459:6  
**examiners** [1] - 460:11  
**example** [2] - 469:2, 506:18  
**example/K** [1] - 469:5  
**example/K-FRPL** [1] - 469:5  
**examples** [2] - 418:16, 505:24  
**Except** [1] - 503:5  
**exchange** [26] - 366:17, 368:11, 368:12, 368:13, 371:9, 380:8, 381:4, 381:7, 381:21, 381:24, 382:15, 383:8, 397:1, 397:7, 397:17, 413:15, 423:19, 428:24, 429:7, 459:21, 459:25, 460:3, 464:4, 469:16, 498:24, 526:14  
**exchanged** [1] - 370:22  
**exchanges** [1] - 426:9  
**exchanging** [8] - 383:25, 422:18, 427:22, 436:15, 459:25, 469:14, 485:20, 486:15  
**excluding** [1] - 396:25  
**excuse** [1] - 408:4  
**excused** [3] - 414:25, 455:8, 455:9  
**executed** [1] - 447:21  
**exempted** [1] - 517:23  
**Exhibit** [110] - 350:6, 350:11, 350:15, 350:24, 351:4, 351:10, 351:12, 351:18, 352:2, 352:7, 352:23, 358:14, 358:15, 358:17, 358:24, 359:1, 359:3, 359:10, 359:12, 359:13, 360:3, 362:5, 362:21, 368:16, 368:20, 368:25, 369:5, 369:7, 370:6, 370:10, 370:14, 370:20, 371:1, 371:6, 380:19, 380:22, 381:15, 392:24, 404:11, 404:16, 412:18, 413:22, 413:25, 427:8, 427:25, 429:6, 429:23, 439:15, 439:16, 439:20, 441:10, 444:7, 444:8,

445:1, 445:2, 445:7, 445:11, 445:19, 445:20, 446:1, 446:12, 446:13, 450:21, 452:18, 452:20, 453:20, 461:25, 462:1, 462:7, 462:8, 462:11, 462:16, 462:17, 462:20, 462:24, 463:2, 463:8, 463:10, 463:13, 463:21, 463:24, 470:19, 471:1, 471:5, 471:11, 471:17, 471:19, 472:19, 474:4, 478:9, 478:11, 478:16, 478:17, 478:24, 479:5, 479:11, 479:18, 479:21, 481:8, 481:14, 486:21, 487:4, 487:20, 488:9, 488:25, 489:6, 533:19, 533:20, 533:21  
**exhibit** [41] - 362:10, 381:16, 391:4, 392:23, 427:14, 427:17, 427:24, 428:4, 428:23, 429:5, 429:16, 429:19, 429:22, 430:19, 431:7, 431:18, 432:4, 432:12, 433:3, 433:11, 434:3, 434:16, 435:2, 435:3, 435:20, 436:6, 436:14, 436:20, 437:8, 437:19, 438:11, 440:8, 440:18, 441:10, 441:24, 442:10, 442:24, 443:10, 446:14, 475:15, 531:6  
**exhibits** [2] - 530:6, 531:8  
**exists** [1] - 511:7  
**exits** [4] - 407:16, 456:11, 482:23, 494:8  
**expect** [6] - 347:12, 348:1, 456:19, 472:16, 489:21, 529:23  
**expected** [1] - 401:22  
**expensive** [1] - 413:11  
**experience** [12] - 385:3, 385:10, 385:17, 408:11, 411:11, 411:14, 414:15, 441:4, 443:4, 454:21, 459:7, 469:18  
**explain** [7] - 354:25, 355:8, 414:15, 460:4, 471:21, 514:2, 530:5  
**explained** [1] - 373:18  
**explaining** [2] - 481:7, 517:5  
**explicit** [1] - 508:15  
**explicitly** [2] - 454:22, 507:16  
**exposure** [1] - 501:5  
**express** [3] - 506:3, 507:11, 507:18  
**expressed** [9] - 389:17, 390:2, 390:19, 392:5, 393:25, 394:16, 439:16, 440:23, 488:1  
**expressing** [2] - 389:25, 393:11  
**expression** [1] - 508:15  
**extent** [2] - 378:24, 490:9  
**external** [2] - 449:24, 467:13  
**extra** [1] - 524:24  
**eyes** [5] - 509:10, 515:16, 519:6, 520:21, 521:4

## F

**F.3d** [1] - 509:19  
**fact** [20] - 374:6, 380:7, 382:1, 384:13, 387:20, 388:4, 389:17, 391:24, 393:6, 404:22, 411:22, 447:10, 449:4, 452:12, 484:7, 487:23, 510:24, 511:10, 511:11, 525:3

## ALL WORD INDEX

11

**facts** [2] - 520:6, 524:11  
**factual** [2] - 348:24, 511:7  
**factually** [1] - 395:15  
**failed** [7] - 514:14, 519:4, 519:14, 520:8, 520:20, 521:6, 521:19  
**failing** [1] - 525:23  
**failure** [1] - 410:10  
**fair** [7] - 350:20, 351:22, 352:16, 385:6, 449:3, 452:2, 529:22  
**familiar** [16] - 418:2, 418:4, 421:10, 421:13, 430:14, 431:22, 431:23, 442:7, 443:5, 444:18, 444:19, 459:7, 460:22, 469:18, 476:25, 508:9  
**fan** [1] - 532:10  
**FAQ** [1] - 476:13  
**far** [4] - 422:7, 434:20, 476:14, 481:2  
**farm** [7] - 363:19, 365:10, 375:6, 375:10, 406:23, 406:24, 407:4  
**farmers** [2] - 373:15, 373:19  
**farms** [4] - 373:14, 373:20, 486:17  
**Farms** [1] - 373:14  
**favorable** [1] - 484:25  
**favorite** [1] - 349:10  
**Federal** [1] - 446:2  
**federal** [6] - 365:24, 408:17, 408:20, 408:24, 449:4, 466:16  
**federally** [7] - 365:15, 365:18, 365:21, 373:11, 374:19, 375:9, 375:19  
**Feds** [1] - 375:19  
**feds** [1] - 365:18  
**fee** [31] - 379:6, 379:25, 382:7, 397:13, 459:15, 460:1, 469:16, 494:22, 495:14, 496:18, 499:13, 523:21, 523:23, 524:1, 524:2, 524:6, 524:9, 524:16, 524:21, 525:7, 525:9, 525:13, 525:18, 526:16, 526:22, 526:23, 526:24, 527:15, 527:22  
**fees** [1] - 429:13  
**fellow** [2] - 378:2, 388:14  
**felt** [4] - 357:10, 360:25, 361:12, 492:13  
**female** [5] - 425:5, 425:12, 426:12, 426:16  
**few** [12] - 375:20, 408:6, 409:14, 426:10, 426:21, 429:18, 435:25, 436:3, 436:15, 438:23, 482:18, 500:22  
**fictitious** [1] - 356:11  
**fictitiously** [1] - 368:2  
**Fida** [3] - 427:11, 528:1, 531:18  
**fight** [2] - 384:20, 384:21  
**figure** [1] - 487:13  
**file** [7] - 467:24, 468:16, 470:4, 472:17, 473:9, 474:19, 475:25  
**filing** [2] - 475:19, 476:4  
**filings** [1] - 459:15  
**fill** [2] - 429:3, 471:22  
**final** [1] - 522:5  
**Financial** [12] - 456:20, 457:12, 458:8, 459:13, 460:7, 460:18, 461:4, 461:8, 462:12, 462:21, 464:6, 466:9

**financial** [19] - 466:21, 467:11, 467:20, 467:21, 467:24, 468:4, 468:6, 468:7, 468:8, 468:10, 468:15, 469:1, 470:4, 474:14, 474:17, 474:18, 479:15, 488:13, 510:22  
**FinCEN** [35] - 456:19, 466:10, 466:11, 466:13, 467:5, 467:16, 467:19, 467:22, 467:23, 468:11, 468:18, 469:25, 470:2, 470:16, 471:4, 471:8, 473:6, 473:7, 473:18, 474:15, 475:25, 476:10, 476:22, 477:7, 477:10, 477:19, 477:22, 478:5, 479:1, 479:19, 479:23, 481:9, 481:10, 481:18, 481:21  
**FinCEN's** [1] - 477:3  
**fine** [9] - 498:9, 498:12, 499:21, 500:6, 501:4, 504:6, 522:2, 528:9, 531:1  
**fingers** [2] - 513:25, 515:12  
**finish** [5] - 366:23, 490:19, 490:25, 492:9, 492:18  
**finished** [2] - 490:8, 491:4  
**first** [42] - 366:25, 380:7, 383:3, 383:20, 384:5, 384:16, 384:20, 385:22, 386:8, 387:8, 387:19, 389:24, 396:6, 397:19, 406:4, 415:19, 428:14, 429:4, 438:3, 460:6, 462:1, 463:9, 470:3, 483:1, 487:13, 490:16, 493:5, 493:22, 494:16, 494:21, 495:22, 501:9, 501:12, 507:3, 507:22, 508:3, 508:6, 508:22, 513:9, 519:23, 523:13, 531:21  
**five** [6] - 362:12, 431:12, 437:7, 453:2, 474:5, 474:7  
**Five** [1] - 432:8  
**fixed** [1] - 523:16  
**flagged** [1] - 516:25  
**flash** [4] - 449:24, 532:5, 532:7, 532:11  
**flip** [1] - 519:19  
**flipping** [1] - 355:3  
**Floor** [1] - 346:21  
**floor** [1] - 444:23  
**Florida** [1] - 418:1  
**flying** [1] - 360:7  
**focus** [4] - 378:3, 388:21, 417:3, 531:1  
**focused** [2] - 397:20, 417:5  
**focusing** [1] - 397:4  
**Focusing** [1] - 397:7  
**folks** [8] - 349:11, 407:11, 456:4, 456:14, 499:25, 528:4, 530:15, 530:22  
**Folks** [1] - 407:19  
**follow** [6] - 375:1, 424:22, 470:17, 493:23, 521:12, 530:11  
**following** [12] - 369:8, 399:25, 420:1, 433:19, 465:14, 480:8, 504:17, 512:14, 519:22, 520:24, 522:3, 523:8  
**follows** [5] - 349:25, 415:21, 458:3, 466:3, 516:22  
**fool** [1] - 443:13  
**foolish** [5] - 514:25, 516:12, 516:18, 517:8, 517:14  
**FOR** [1] - 346:11

**foreign** [4] - 474:21, 475:8, 476:17  
**forensic** [2] - 417:24, 417:25  
**forgot** [1] - 485:22  
**form** [9] - 371:14, 429:3, 470:1, 470:11, 471:6, 471:8, 473:11, 474:11, 475:2  
**Form** [8] - 470:8, 470:9, 471:4, 471:22, 472:7, 475:19, 479:23, 481:18  
**formal** [1] - 506:24  
**former** [4] - 367:3, 408:11, 415:3, 485:22  
**forms** [2] - 453:25, 481:19  
**forward** [1] - 489:15  
**four** [10] - 362:4, 384:5, 431:12, 436:25, 453:1, 473:13, 473:17, 473:18, 494:18, 523:8  
**FRANCISCO** [1] - 346:17  
**frankly** [1] - 356:1  
**fraud** [1] - 459:6  
**free** [2] - 464:15, 482:10  
**frequently** [1] - 400:9  
**Friday** [7] - 431:5, 431:9, 490:23, 490:25, 491:24, 492:13, 492:22  
**friend** [3] - 355:13, 355:17, 375:18  
**front** [7] - 363:12, 430:20, 430:24, 433:15, 433:16, 462:3, 480:4  
**FRPL** [1] - 469:5  
**fuck** [1] - 438:7  
**fucked** [1] - 357:2  
**full** [10] - 391:9, 391:13, 393:1, 403:2, 404:12, 409:6, 409:7, 412:24, 508:22  
**fuller** [2] - 391:13, 490:14  
**fully** [1] - 508:3  
**fund** [5] - 348:3, 468:14, 498:5, 500:8, 500:12  
**Funds** [2] - 500:13, 500:14  
**funds** [29] - 349:5, 441:8, 443:20, 469:10, 469:11, 486:8, 494:24, 495:1, 495:3, 495:6, 495:14, 495:16, 495:17, 496:10, 497:4, 497:9, 497:16, 498:2, 498:10, 498:16, 498:18, 499:6, 499:8, 499:15, 499:25, 500:2, 500:5, 500:6, 500:12  
**furiously** [1] - 530:9  
**furniture** [1] - 481:4

## G

**gather** [1] - 480:4  
**gears** [1] - 445:25  
**general** [3] - 368:22, 460:15, 487:24  
**Generally** [2] - 459:11, 469:22  
**generally** [3] - 427:19, 444:2, 459:18  
**generic** [1] - 409:11  
**Gentlemen** [2] - 391:11, 457:6  
**gentlemen** [4] - 353:2, 421:2, 482:16, 493:17  
**geographic** [1] - 458:12  
**geographical** [1] - 474:1

## ALL WORD INDEX

12

**George** <sup>[1]</sup> - 440:12  
**GILLIAN** <sup>[1]</sup> - 346:16  
**given** <sup>[2]</sup> - 396:4, 399:12  
**glasses** <sup>[1]</sup> - 435:10  
**goings** <sup>[1]</sup> - 424:22  
**Goklu** <sup>[128]</sup> - 372:17, 372:21, 375:3, 375:5, 375:15, 375:21, 375:22, 376:5, 376:8, 376:16, 376:23, 377:1, 377:4, 377:11, 378:3, 378:7, 378:9, 378:15, 378:18, 378:24, 379:3, 379:4, 379:9, 379:24, 380:4, 382:1, 382:18, 383:3, 383:23, 384:5, 385:22, 386:8, 386:9, 387:7, 387:18, 387:20, 388:2, 388:3, 388:16, 389:4, 390:2, 391:24, 392:10, 392:16, 393:6, 393:25, 394:21, 394:22, 395:1, 395:9, 395:23, 396:22, 397:4, 397:19, 398:5, 398:12, 398:25, 399:12, 399:20, 399:22, 400:8, 400:11, 401:9, 401:17, 403:15, 403:20, 404:18, 405:7, 405:9, 405:16, 405:19, 406:9, 406:14, 407:3, 421:11, 421:23, 422:5, 422:10, 422:12, 422:13, 445:4, 446:20, 447:19, 447:25, 448:8, 448:17, 448:20, 448:24, 449:3, 451:7, 451:18, 452:6, 452:10, 453:5, 453:10, 453:15, 453:23, 454:1, 454:2, 462:13, 463:11, 463:12, 463:15, 463:17, 463:18, 464:3, 479:19, 481:22, 481:23, 483:6, 483:9, 484:16, 485:19, 486:13, 486:14, 486:23, 487:4, 487:12, 487:14, 487:21, 487:23, 487:25, 489:7, 489:14  
**GOKLU** <sup>[1]</sup> - 346:6  
**Goklu's** <sup>[10]</sup> - 398:9, 447:8, 447:22, 448:24, 450:7, 452:24, 488:4, 488:12, 488:18, 488:21  
**Gonzalez** <sup>[2]</sup> - 529:24, 531:5  
**Gonzalez's** <sup>[1]</sup> - 493:23  
**goods** <sup>[1]</sup> - 524:8  
**government** <sup>[3]</sup> - 456:1, 519:20, 527:4  
**Government** <sup>[120]</sup> - 346:14, 348:16, 350:6, 350:14, 350:24, 351:4, 351:10, 351:18, 352:1, 352:2, 352:22, 352:23, 358:14, 358:17, 358:24, 359:3, 359:10, 359:13, 360:3, 362:4, 362:21, 368:16, 368:20, 368:25, 369:5, 404:11, 412:17, 413:22, 413:25, 415:3, 423:10, 425:24, 427:8, 427:24, 429:6, 429:22, 439:16, 439:19, 441:10, 444:6, 445:1, 445:6, 445:18, 445:25, 446:1, 446:12, 450:21, 452:18, 453:20, 457:8, 457:11, 463:1, 464:17, 464:19, 471:10, 479:4, 481:8, 481:14, 482:13, 482:15, 482:17, 484:25, 485:18, 486:21, 487:4, 487:20, 488:9, 488:25, 489:5, 489:13, 489:22, 490:9, 492:1, 492:3, 493:25, 494:1, 494:11, 494:20, 495:21, 495:23, 496:22, 498:5, 500:3, 500:19,

501:17, 501:19, 502:7, 502:14, 502:22, 504:17, 504:21, 504:23, 505:6, 505:10, 505:24, 506:1, 506:9, 506:11, 507:25, 509:1, 510:4, 510:12, 510:15, 512:3, 514:14, 515:18, 519:3, 519:14, 520:8, 521:6, 521:19, 523:7, 524:25, 528:7, 530:17, 533:19, 533:20, 533:21  
**Government's** <sup>[45]</sup> - 347:10, 348:7, 370:6, 370:10, 370:13, 370:20, 370:25, 380:19, 380:21, 380:22, 392:24, 461:25, 462:1, 462:7, 462:8, 462:16, 462:17, 462:24, 463:2, 463:10, 463:13, 463:21, 463:24, 470:19, 471:1, 471:5, 471:11, 471:19, 472:19, 474:4, 478:9, 478:11, 478:16, 478:17, 478:24, 479:5, 479:18, 479:21, 500:25, 509:15, 524:15, 526:19, 526:25, 527:8, 528:9  
**governs** <sup>[1]</sup> - 353:4  
**Grabbing** <sup>[1]</sup> - 430:22  
**gray** <sup>[2]</sup> - 359:15, 359:16  
**great** <sup>[1]</sup> - 349:10  
**grew** <sup>[1]</sup> - 373:19  
**gross** <sup>[1]</sup> - 517:3  
**ground** <sup>[2]</sup> - 388:19, 484:24  
**growing** <sup>[2]</sup> - 373:1, 376:17  
**grown** <sup>[1]</sup> - 373:14  
**guess** <sup>[15]</sup> - 347:13, 371:21, 384:11, 387:17, 451:15, 452:12, 453:23, 489:17, 492:5, 498:4, 508:5, 514:17, 522:1, 525:22, 526:15  
**guessing** <sup>[2]</sup> - 347:9, 431:12  
**guide** <sup>[1]</sup> - 420:9  
**guilty** <sup>[13]</sup> - 484:8, 485:12, 489:14, 509:23, 514:11, 516:10, 516:14, 516:16, 517:12, 517:22, 519:25, 523:6  
**Guilty** <sup>[1]</sup> - 514:23  
**guy** <sup>[8]</sup> - 356:5, 360:14, 360:15, 361:4, 361:5, 361:10, 435:10, 489:1  
**guys** <sup>[2]</sup> - 522:2, 532:6

## H

**half** <sup>[6]</sup> - 349:16, 366:25, 379:18, 381:24, 491:9, 492:6  
**Hamptons** <sup>[1]</sup> - 356:17  
**hand** <sup>[5]</sup> - 428:13, 428:14, 457:16, 464:25, 531:12  
**Hang** <sup>[1]</sup> - 492:18  
**happy** <sup>[1]</sup> - 420:10  
**hard** <sup>[8]</sup> - 440:9, 449:24, 519:21, 520:24, 521:12, 521:13, 531:12, 532:8  
**harm** <sup>[1]</sup> - 420:16  
**harmful** <sup>[1]</sup> - 459:19  
**hastily** <sup>[1]</sup> - 492:25  
**head** <sup>[7]</sup> - 356:10, 402:10, 440:15, 452:15, 487:1, 514:22, 521:14  
**headed** <sup>[1]</sup> - 430:10  
**heading** <sup>[3]</sup> - 431:10, 433:7, 473:15

**hear** <sup>[15]</sup> - 353:4, 367:14, 405:3, 405:4, 405:7, 405:9, 410:1, 411:19, 421:6, 491:23, 492:12, 493:25, 503:22, 504:3, 514:1  
**heard** <sup>[10]</sup> - 355:3, 405:3, 483:10, 486:2, 501:13, 501:22, 502:19, 503:25, 510:13, 515:18  
**hearing** <sup>[1]</sup> - 515:13  
**hears** <sup>[1]</sup> - 420:19  
**heart** <sup>[1]</sup> - 531:2  
**heck** <sup>[1]</sup> - 401:25  
**hedge** <sup>[1]</sup> - 468:14  
**held** <sup>[2]</sup> - 470:15, 495:5  
**hello** <sup>[1]</sup> - 429:2  
**Hello** <sup>[1]</sup> - 429:3  
**help** <sup>[7]</sup> - 410:20, 467:11, 468:4, 468:6, 480:2, 516:8  
**helpful** <sup>[1]</sup> - 474:21  
**helpline** <sup>[2]</sup> - 476:19, 476:20  
**helps** <sup>[1]</sup> - 360:18  
**hence** <sup>[1]</sup> - 496:1  
**heroin** <sup>[4]</sup> - 401:14, 401:15, 401:18, 402:5  
**hesitation** <sup>[1]</sup> - 520:13  
**hi** <sup>[3]</sup> - 359:18, 428:15, 441:19  
**Hi** <sup>[5]</sup> - 428:17, 428:19, 432:23, 441:18, 441:21  
**hidden** <sup>[1]</sup> - 505:9  
**hide** <sup>[3]</sup> - 441:7, 443:20, 455:2  
**high** <sup>[12]</sup> - 436:10, 474:11, 511:10, 518:7, 519:16, 520:3, 520:10, 520:21, 521:4, 521:5, 521:7, 521:21  
**highlight** <sup>[1]</sup> - 504:22  
**highlighting** <sup>[1]</sup> - 524:10  
**highly** <sup>[1]</sup> - 385:10  
**himself** <sup>[5]</sup> - 410:11, 485:21, 487:9, 487:17, 503:9  
**hint** <sup>[5]</sup> - 383:17, 387:20, 394:22, 403:22, 420:20  
**history** <sup>[4]</sup> - 359:23, 360:2, 434:10, 451:23  
**hm** <sup>[1]</sup> - 508:20  
**hmm** <sup>[2]</sup> - 378:25, 394:15  
**Hold** <sup>[2]</sup> - 381:14, 501:20  
**holds** <sup>[1]</sup> - 474:14  
**home** <sup>[5]</sup> - 447:19, 448:3, 448:15, 448:16, 449:5  
**homey** <sup>[2]</sup> - 431:2, 432:14  
**Homie** <sup>[1]</sup> - 434:5  
**homie** <sup>[1]</sup> - 430:6  
**Hon** <sup>[1]</sup> - 347:2  
**honestly** <sup>[4]</sup> - 486:10, 507:2, 525:11, 527:16  
**Honor** <sup>[84]</sup> - 347:23, 350:4, 350:7, 350:23, 351:2, 351:9, 351:16, 352:5, 352:21, 354:2, 354:9, 354:11, 354:19, 361:14, 363:4, 369:3, 370:25, 371:4, 372:4, 374:23, 408:1, 409:15, 409:24, 410:4, 414:18, 414:20, 417:8, 422:1, 422:11, 439:7, 446:22, 455:6, 456:3,



## ALL WORD INDEX

13

456:18, 456:24, 457:10, 461:24,  
463:5, 464:8, 464:18, 471:14, 480:1,  
482:3, 482:5, 482:14, 483:4, 483:12,  
483:18, 484:3, 484:10, 484:14,  
484:17, 485:6, 485:24, 489:20,  
489:24, 490:5, 491:1, 493:14, 494:14,  
495:20, 497:3, 497:11, 498:12, 500:4,  
500:20, 503:1, 503:13, 510:14,  
510:21, 514:21, 516:10, 520:23,  
521:9, 522:24, 524:17, 524:24, 527:1,  
527:7, 528:7, 529:4, 529:7, 531:1,  
531:11  
**Honor's** [1] - 489:21  
**HONORABLE** [1] - 346:12  
**hookers** [3] - 355:15, 355:19, 488:12  
**hope** [3] - 349:16, 457:5, 520:15  
**Hopefully** [1] - 420:19  
**hopefully** [2] - 445:7, 482:20  
**hoping** [1] - 529:4  
**hour** [5] - 379:18, 379:21, 490:20,  
491:2, 491:9  
**hours** [3] - 491:25, 492:6, 492:8  
**house** [8] - 427:5, 448:20, 448:24,  
449:1, 449:5, 449:9, 449:10, 449:14  
**hug** [1] - 412:3  
**huge** [1] - 434:8  
**hundreds** [1] - 365:1

## I

**ID** [1] - 463:25  
**idea** [6] - 374:9, 486:23, 487:24, 525:6,  
525:8, 527:16  
**identical** [1] - 510:25  
**identification** [6] - 371:14, 450:14,  
463:23, 470:14, 472:11, 478:9  
**identified** [1] - 422:10  
**identify** [2] - 377:16, 422:5  
**identifying** [3] - 470:13, 473:3, 473:5  
**identity** [1] - 472:10  
**idiot** [1] - 355:13  
**IE** [1] - 511:7  
**ignore** [1] - 518:1  
**illegal** [29] - 365:15, 365:21, 365:23,  
374:19, 375:9, 375:19, 384:1, 384:7,  
385:7, 385:12, 389:10, 389:20,  
389:24, 486:7, 486:16, 487:7, 487:18,  
488:7, 488:22, 489:7, 489:11, 506:6,  
506:22, 507:9, 507:13, 508:14, 518:2,  
518:19, 518:21  
**illegality** [2] - 487:14, 508:16  
**illegitimate** [1] - 395:8  
**illicit** [1] - 507:15  
**image** [2] - 350:9, 352:13  
**imagine** [1] - 529:1  
**imbalance** [1] - 517:3  
**immediately** [2] - 395:20, 405:19  
**implication** [1] - 454:14  
**imply** [2] - 356:2, 361:12  
**implying** [3] - 361:8, 387:13, 387:14

**important** [1] - 507:10  
**importantly** [1] - 484:6  
**improper** [1] - 504:20  
**inclination** [1] - 395:7  
**include** [6] - 417:6, 469:13, 496:10,  
499:2, 511:1, 511:12  
**included** [2] - 498:6, 526:20  
**includes** [1] - 495:17  
**including** [5] - 448:5, 470:5, 474:18,  
474:19, 496:6  
**inclusion** [2] - 505:20, 528:19  
**inclusive** [1] - 500:7  
**income** [1] - 360:15  
**inconvenience** [1] - 390:11  
**incorporation** [1] - 446:16  
**indicate** [2] - 472:12, 488:20  
**indicated** [17] - 372:20, 375:14, 381:1,  
382:1, 382:13, 382:18, 392:10,  
394:19, 395:20, 407:3, 447:7, 447:18,  
447:25, 481:15, 483:8, 508:4  
**indicates** [5] - 381:4, 479:22, 481:8,  
481:9, 481:16  
**indicating** [1] - 404:23  
**indication** [2] - 357:12, 403:7  
**indicative** [1] - 515:19  
**indictment** [3] - 484:23, 530:18,  
530:22  
**individual** [4] - 356:21, 356:22,  
421:11, 473:5  
**individuals** [8] - 356:12, 385:11,  
460:11, 460:19, 461:9, 464:7, 477:11,  
488:14  
**Infante** [1] - 348:8  
**Infante's** [1] - 495:25  
**infer** [2] - 506:24, 508:2  
**inference** [2] - 488:22, 507:8  
**infinite** [1] - 388:24  
**inform** [2] - 426:3, 505:23  
**information** [36] - 377:21, 380:16,  
384:4, 400:12, 403:23, 447:16, 460:8,  
460:15, 470:11, 470:12, 470:13,  
470:16, 471:20, 471:24, 472:8,  
472:10, 472:13, 472:16, 472:23,  
473:3, 473:4, 473:6, 473:10, 473:11,  
473:14, 473:16, 473:18, 473:22,  
473:23, 474:2, 474:11, 474:15,  
474:18, 475:10, 481:16, 491:13  
**informing** [1] - 508:3  
**initial** [2] - 492:2, 529:5  
**initiate** [2] - 379:8, 397:23  
**inject** [1] - 509:3  
**input** [1] - 472:13  
**inquire** [3] - 415:18, 457:24, 465:13  
**inquiries** [1] - 466:20  
**insert** [1] - 499:7  
**inserting** [1] - 506:13  
**inside** [8] - 363:11, 375:16, 375:23,  
430:20, 437:3, 437:15, 448:25, 449:10  
**instance** [1] - 495:22

**instead** [3] - 362:2, 498:5, 521:18  
**institution** [4] - 468:4, 468:6, 468:12,  
474:17  
**institutions** [13] - 460:11, 466:21,  
467:11, 467:13, 467:24, 468:9,  
468:10, 468:15, 470:4, 474:14,  
474:18, 474:19, 479:15  
**instruct** [3] - 494:25, 495:15, 528:25  
**instructed** [1] - 506:18  
**instructing** [1] - 507:23  
**instruction** [27] - 420:5, 420:19, 421:3,  
499:8, 499:10, 504:19, 505:8, 506:17,  
507:12, 509:6, 509:15, 509:16, 510:1,  
510:9, 511:4, 511:13, 518:23, 520:18,  
522:11, 522:14, 522:17, 522:19,  
522:22, 527:23, 528:2, 528:12, 528:19  
**instructions** [9] - 492:4, 493:23,  
494:2, 507:14, 524:22, 530:4, 530:8,  
530:11, 530:13  
**intellectually** [1] - 515:13  
**intend** [7] - 349:8, 483:4, 483:11,  
493:12, 497:1, 504:16, 525:21  
**intends** [1] - 347:16  
**intensive** [1] - 399:1  
**intent** [6] - 485:15, 486:8, 489:11,  
525:24, 526:2, 527:14  
**intention** [1] - 347:7  
**intentions** [1] - 455:2  
**interacted** [1] - 425:14  
**interaction** [1] - 362:18  
**interactions** [1] - 384:12  
**interconnected** [1] - 418:12  
**interest** [2] - 378:14, 488:1  
**interested** [2] - 389:15, 389:16  
**interesting** [1] - 514:7  
**interim** [1] - 456:21  
**internal** [2] - 467:13, 476:4  
**internally** [1] - 476:5  
**interpretations** [1] - 389:15  
**interpreted** [1] - 349:4  
**interview** [7] - 425:19, 425:25, 426:9,  
447:24, 449:11, 449:13, 454:1  
**interviewed** [6] - 426:2, 426:3, 435:16,  
435:24, 442:19, 447:25  
**intricacies** [1] - 374:4  
**introduce** [2] - 486:23, 525:21  
**introduced** [1] - 376:21  
**introducing** [1] - 490:10  
**invading** [2] - 506:10, 508:25  
**invasive** [1] - 507:3  
**investigate** [6] - 416:6, 458:21,  
501:17, 502:5, 502:14, 502:16  
**investigating** [1] - 357:11  
**investigation** [16] - 361:11, 367:23,  
377:16, 388:20, 393:20, 421:10,  
421:13, 421:15, 422:14, 424:13,  
438:14, 444:20, 453:14, 453:23,  
461:17, 478:3  
**Investigations** [3] - 458:15, 458:16,  
458:20

## ALL WORD INDEX

14

**investigations** <sup>[10]</sup> - 377:23, 417:3, 417:5, 417:6, 418:5, 418:22, 418:24, 501:19, 502:16  
**investigative** <sup>[1]</sup> - 367:6  
**investigator** <sup>[2]</sup> - 458:11, 459:5  
**investment** <sup>[1]</sup> - 475:12  
**involve** <sup>[1]</sup> - 521:22  
**involved** <sup>[31]</sup> - 377:12, 384:17, 384:25, 385:1, 385:7, 385:15, 385:25, 388:4, 388:18, 401:24, 418:25, 424:2, 424:14, 424:20, 454:3, 461:17, 478:2, 486:14, 486:24, 488:14, 508:12, 511:23, 512:8, 512:11, 514:18, 515:3, 516:7, 518:8, 519:17, 520:4, 520:11  
**involves** <sup>[1]</sup> - 525:13  
**involving** <sup>[3]</sup> - 417:7, 418:22, 509:23  
**IP** <sup>[1]</sup> - 442:16  
**irregular** <sup>[1]</sup> - 385:11  
**irrelevant** <sup>[3]</sup> - 420:6, 525:22, 525:24  
**issue** <sup>[23]</sup> - 347:4, 347:5, 347:22, 348:12, 348:13, 348:19, 354:7, 388:16, 473:21, 486:7, 486:11, 489:10, 496:1, 496:7, 504:22, 506:13, 509:3, 514:9, 525:15, 528:5, 530:5, 531:11  
**issued** <sup>[1]</sup> - 446:17  
**issues** <sup>[4]</sup> - 349:10, 349:11, 486:10, 506:14  
**it'll** <sup>[1]</sup> - 492:10  
**item** <sup>[1]</sup> - 422:6  
**items** <sup>[1]</sup> - 450:2  
**iteration** <sup>[1]</sup> - 521:15  
**itself** <sup>[3]</sup> - 506:13, 509:3, 509:22

## J

**jail** <sup>[5]</sup> - 390:15, 390:16, 390:21, 390:22, 391:24  
**January** <sup>[18]</sup> - 351:24, 352:11, 354:10, 358:21, 359:6, 392:9, 392:10, 392:17, 392:23, 396:12, 402:16, 410:22, 412:6, 425:4, 426:13, 481:12, 481:19  
**Jay** <sup>[1]</sup> - 417:25  
**Jersey** <sup>[1]</sup> - 440:12  
**job** <sup>[8]</sup> - 355:15, 418:7, 458:10, 458:19, 467:7, 467:9, 502:15, 506:15  
**jobs** <sup>[1]</sup> - 417:16  
**jog** <sup>[1]</sup> - 426:16  
**John** <sup>[1]</sup> - 417:25  
**joke** <sup>[1]</sup> - 438:1  
**judge** <sup>[4]</sup> - 347:6, 349:2, 464:13, 479:8  
**Judge** <sup>[7]</sup> - 380:16, 414:23, 483:25, 484:22, 493:2, 496:12, 522:4  
**JUDGE** <sup>[1]</sup> - 346:12  
**July** <sup>[9]</sup> - 416:2, 416:3, 416:24, 422:20, 422:22, 435:5, 467:15, 481:13, 481:20  
**jump** <sup>[4]</sup> - 381:12, 507:24, 518:6, 520:2  
**June** <sup>[1]</sup> - 416:14  
**jurisdiction** <sup>[2]</sup> - 474:23, 475:13

**juror** <sup>[2]</sup> - 505:9, 511:8  
**jurors** <sup>[5]</sup> - 407:22, 411:1, 491:23, 507:14, 531:13  
**jury** <sup>[84]</sup> - 347:8, 348:11, 348:13, 349:14, 350:25, 352:3, 352:23, 353:9, 353:15, 353:18, 355:8, 358:13, 358:25, 359:10, 363:9, 369:1, 371:2, 387:15, 391:8, 409:15, 409:18, 409:20, 410:11, 420:5, 427:9, 444:9, 445:1, 446:9, 460:4, 463:3, 463:21, 467:16, 471:12, 471:21, 479:6, 480:4, 484:7, 484:18, 485:11, 485:19, 486:11, 488:3, 488:20, 489:4, 489:13, 489:16, 489:18, 491:6, 492:13, 492:22, 492:24, 493:4, 496:8, 496:9, 501:2, 503:10, 504:4, 505:23, 506:19, 506:21, 506:23, 507:10, 507:23, 508:3, 508:9, 508:25, 509:7, 514:8, 514:9, 518:23, 525:2, 525:14, 527:18, 528:24, 529:24, 530:4, 530:6, 530:7, 530:12, 530:18, 530:23, 531:5, 531:8, 531:16  
**Jury** <sup>[10]</sup> - 407:16, 407:21, 409:5, 421:1, 456:11, 457:4, 482:23, 482:24, 493:10, 494:8  
**jury's** <sup>[1]</sup> - 490:18

## K

**KASSNER** <sup>[123]</sup> - 346:16, 347:23, 348:17, 350:2, 350:4, 350:23, 351:9, 351:16, 352:1, 352:8, 352:21, 352:25, 353:5, 353:8, 353:21, 353:23, 354:2, 354:9, 354:11, 354:14, 354:19, 354:24, 355:5, 355:20, 356:13, 357:22, 358:12, 358:16, 358:23, 359:2, 359:9, 361:17, 362:20, 362:23, 363:8, 364:10, 365:6, 368:15, 368:25, 370:1, 370:5, 370:25, 408:1, 408:3, 410:4, 410:13, 412:16, 413:3, 413:24, 414:6, 414:20, 457:10, 458:5, 461:24, 462:15, 463:1, 463:9, 463:20, 464:8, 464:18, 466:5, 470:18, 470:21, 470:23, 471:10, 471:18, 472:2, 472:18, 473:12, 474:3, 475:1, 475:15, 478:7, 478:19, 479:4, 480:1, 481:1, 481:6, 482:3, 482:5, 482:14, 485:24, 489:20, 494:14, 494:16, 494:19, 495:11, 495:20, 496:3, 497:3, 497:11, 497:14, 497:18, 497:24, 498:8, 500:4, 500:13, 500:20, 502:22, 503:5, 503:13, 503:23, 504:2, 510:14, 510:20, 514:21, 516:9, 516:21, 517:15, 519:21, 524:17, 525:8, 527:1, 527:7, 528:7, 529:3, 529:7, 530:25, 532:10, 533:6, 533:8, 533:15, 533:17  
**Kassner** <sup>[6]</sup> - 347:5, 347:21, 350:3, 353:17, 354:23, 407:25  
**Keep** <sup>[1]</sup> - 407:13  
**keep** <sup>[15]</sup> - 361:1, 390:16, 392:2,

392:18, 420:17, 456:9, 467:25, 468:16, 470:6, 474:13, 476:3, 488:18, 494:6, 502:23, 518:22  
**keeping** <sup>[3]</sup> - 475:9, 476:5, 479:16  
**kept** <sup>[3]</sup> - 400:16, 460:24, 477:2  
**key** <sup>[2]</sup> - 401:11, 402:4  
**KEYS** <sup>[1]</sup> - 486:23  
**keys** <sup>[6]</sup> - 401:7, 401:14, 401:19, 401:21, 486:22, 503:7  
**kids** <sup>[1]</sup> - 487:1  
**killed** <sup>[1]</sup> - 443:16  
**kind** <sup>[9]</sup> - 358:5, 385:18, 451:11, 473:16, 474:11, 485:15, 508:15, 509:12, 510:8  
**kinds** <sup>[1]</sup> - 468:10  
**know,business** <sup>[1]</sup> - 475:11  
**know,if** <sup>[1]</sup> - 476:17  
**knowing** <sup>[2]</sup> - 485:16, 513:6  
**knowledge** <sup>[19]</sup> - 374:18, 408:25, 485:16, 486:7, 488:21, 507:17, 509:23, 510:3, 511:6, 511:17, 513:7, 513:15, 514:23, 516:10, 516:17, 517:12, 517:22, 518:15, 519:25  
**known** <sup>[7]</sup> - 418:14, 418:19, 463:12, 466:10, 468:14, 475:23, 481:23  
**knows** <sup>[2]</sup> - 402:4, 402:8  
**KYC** <sup>[3]</sup> - 460:7, 460:14

## L

**L-I-E-F-K-E** <sup>[1]</sup> - 415:17  
**L.A** <sup>[1]</sup> - 360:8  
**lab** <sup>[1]</sup> - 450:2  
**labeled** <sup>[1]</sup> - 450:17  
**labels** <sup>[3]</sup> - 444:5, 445:16, 445:22  
**Laboratory** <sup>[1]</sup> - 417:18  
**laboratory** <sup>[2]</sup> - 417:23, 447:13  
**lack** <sup>[2]</sup> - 511:5, 511:16  
**Ladies** <sup>[2]</sup> - 391:11, 457:6  
**ladies** <sup>[4]</sup> - 353:2, 421:2, 482:16, 493:17  
**lame** <sup>[1]</sup> - 443:15  
**landed** <sup>[2]</sup> - 358:7, 521:15  
**language** <sup>[13]</sup> - 496:7, 499:1, 500:25, 514:10, 519:5, 521:11, 521:23, 522:5, 522:16, 522:18, 526:20, 528:13, 528:15  
**languages** <sup>[1]</sup> - 476:17  
**laptop** <sup>[2]</sup> - 532:3, 532:4  
**large** <sup>[4]</sup> - 364:16, 389:18, 425:6, 472:1  
**larger** <sup>[4]</sup> - 357:9, 377:18, 436:3, 436:5  
**last** <sup>[15]</sup> - 354:4, 359:24, 361:15, 413:18, 431:25, 450:5, 450:10, 452:13, 453:7, 485:21, 511:21, 518:12, 520:18, 521:15, 521:16  
**late** <sup>[1]</sup> - 442:1  
**latter** <sup>[1]</sup> - 507:4  
**laughed** <sup>[1]</sup> - 388:3

## ALL WORD INDEX

15

**laundered** [2] - 377:24  
**laundering** [32] - 360:14, 361:4, 377:12, 378:7, 385:1, 408:9, 408:13, 408:14, 414:13, 416:7, 441:7, 443:20, 453:21, 454:3, 454:9, 455:1, 466:16, 467:21, 468:1, 468:2, 468:3, 468:4, 468:17, 470:7, 475:24, 476:15, 479:15, 485:12, 486:6, 488:24, 489:12, 511:15  
**LAW** [1] - 346:20  
**law** [32] - 349:3, 365:24, 373:3, 373:5, 373:6, 374:13, 374:22, 408:18, 408:20, 408:24, 417:16, 426:4, 456:21, 458:21, 466:21, 470:16, 473:8, 487:9, 487:15, 494:2, 496:13, 496:23, 499:24, 500:1, 500:4, 500:12, 504:24, 507:25, 509:13, 511:2, 512:13, 523:1  
**lawful** [1] - 504:14  
**laws** [6] - 366:5, 373:8, 373:13, 375:1, 375:16, 375:23  
**Laws** [1] - 416:7  
**lawyer** [1] - 483:10  
**lawyers** [1] - 493:20  
**lazy** [1] - 355:15  
**lead** [2] - 384:5, 420:10  
**leads** [1] - 487:25  
**learning** [10] - 513:22, 514:17, 515:2, 515:11, 516:6, 516:15, 516:22, 517:22, 518:3, 518:4  
**least** [7] - 353:19, 477:18, 480:6, 486:13, 494:12, 517:20, 529:22  
**leave** [6] - 396:17, 399:3, 399:22, 437:13, 507:19, 532:13  
**leaves** [2] - 347:8, 496:22  
**leaving** [1] - 496:17  
**led** [1] - 376:23  
**leeway** [1] - 420:12  
**left** [12] - 352:9, 354:15, 358:11, 359:16, 360:6, 413:25, 414:4, 416:13, 428:14, 452:22, 518:1, 521:25  
**left-hand** [1] - 428:14  
**leftover** [1] - 530:24  
**legal** [19] - 348:12, 348:24, 366:21, 372:2, 373:2, 373:10, 373:13, 374:4, 374:8, 374:16, 375:9, 375:10, 405:7, 405:21, 408:23, 486:18, 496:11, 503:14, 509:5  
**legalities** [1] - 364:2  
**legality** [1] - 372:23  
**legally** [3] - 373:19, 373:21, 374:22  
**legible** [1] - 479:24  
**legitimate** [2] - 395:7, 519:9  
**less** [4] - 361:9, 381:24, 492:22, 508:9  
**letter** [3] - 478:18, 500:24, 504:13  
**letting** [6] - 363:17, 365:22, 375:25, 493:7, 509:7  
**level** [1] - 474:11  
**Lexington** [1] - 432:2  
**liar** [3] - 442:16, 443:15

**license** [10] - 371:17, 374:7, 459:15, 459:16, 459:18, 459:24, 460:5, 464:7, 486:2, 486:3  
**licensed** [11] - 373:2, 373:15, 373:20, 405:1, 405:4, 405:20, 460:19, 462:13, 462:22, 464:4  
**licenses** [1] - 461:9  
**licensing** [4] - 374:15, 459:21, 463:15, 464:1  
**lie** [1] - 442:12  
**LIEFKE** [2] - 415:19, 533:10  
**Liefke** [48] - 367:3, 367:4, 367:10, 415:4, 415:5, 415:7, 415:17, 415:24, 416:15, 417:12, 418:2, 421:10, 421:23, 422:5, 427:2, 427:14, 428:5, 428:22, 429:15, 429:24, 430:14, 435:3, 435:16, 435:19, 436:12, 436:13, 438:5, 438:10, 438:25, 439:15, 439:20, 440:22, 442:7, 442:19, 443:4, 443:24, 444:13, 445:13, 446:14, 450:25, 454:21, 485:24, 485:25, 490:7, 502:24, 503:3, 503:19  
**Liefke's** [1] - 491:14  
**life** [1] - 506:24  
**light** [3] - 359:14, 484:24, 531:11  
**lights** [1] - 438:22  
**limited** [2] - 360:16, 361:5  
**list** [1] - 531:6  
**listed** [5] - 370:23, 451:3, 463:12, 463:23, 479:20  
**Listen** [1] - 492:15  
**listen** [6] - 387:15, 388:9, 396:14, 410:16, 438:25, 522:7  
**listened** [5] - 353:10, 354:4, 364:13, 366:11, 413:22  
**listening** [4] - 353:3, 353:16, 355:1, 439:2  
**literally** [1] - 498:16  
**living** [1] - 444:24  
**local** [2] - 422:21, 428:18  
**localbitcoin** [1] - 429:14  
**localbitcoins** [5] - 377:15, 428:1, 429:4, 429:11, 429:17  
**localbitcoins.com** [6] - 377:5, 377:7, 377:25, 422:16, 422:23, 428:8  
**locate** [1] - 481:18  
**located** [2] - 474:21, 474:22  
**location** [6] - 430:16, 469:11, 469:12, 470:14, 473:23, 475:4  
**locations** [3] - 368:22, 370:2  
**LOL** [2] - 440:6, 440:7  
**longest** [1] - 379:20  
**look** [19] - 354:12, 360:16, 391:14, 410:12, 410:21, 410:24, 422:17, 446:18, 462:2, 495:19, 496:25, 497:8, 499:3, 509:14, 522:8, 523:2, 528:4, 528:23, 531:9  
**looked** [2] - 400:9, 425:5  
**Looking** [1] - 430:4

**looking** [21] - 353:25, 378:1, 378:15, 398:12, 398:13, 398:15, 398:18, 398:20, 400:8, 422:16, 428:17, 429:11, 432:14, 440:2, 449:16, 479:17, 480:4, 499:11, 517:19  
**looks** [1] - 528:9  
**loosening** [1] - 373:8  
**lose** [1] - 524:20  
**losing** [1] - 382:9  
**lost** [1] - 382:2  
**lower** [1] - 529:12  
**luck** [5] - 437:17, 443:1, 443:2, 489:19  
**lunch** [7] - 456:5, 456:7, 456:9, 457:6, 529:25, 530:1  
**Luncheon** [1] - 456:25  
**luxury** [1] - 489:19  
**Lyft** [1] - 434:23

## M

**machine** [6] - 364:20, 387:3, 387:4, 389:19, 390:7, 396:3  
**main** [1] - 418:17  
**maintain** [6] - 460:12, 460:18, 461:5, 476:22, 477:7, 478:25  
**maintained** [1] - 471:6  
**man** [8] - 356:25, 360:17, 360:19, 363:14, 365:1, 432:22, 436:10, 437:17  
**Manhattan** [13] - 352:14, 352:17, 393:13, 425:5, 431:20, 438:16, 439:10, 439:17, 440:5, 440:6, 440:21, 440:24  
**manner** [1] - 523:23  
**map** [2] - 368:21, 368:22  
**March** [3] - 416:13, 458:18, 466:12  
**MARIETOU** [1] - 346:17  
**Marijuana** [1] - 405:23  
**marijuana** [41] - 364:3, 365:15, 365:20, 365:22, 365:24, 366:6, 366:21, 372:23, 373:1, 373:9, 373:20, 374:5, 374:8, 374:10, 374:16, 374:18, 374:21, 375:4, 375:17, 376:3, 376:5, 376:8, 376:11, 376:14, 376:17, 403:16, 404:3, 404:19, 405:1, 405:4, 405:16, 405:20, 405:25, 408:16, 408:17, 408:23, 409:1, 412:10, 413:15, 486:17, 487:22  
**mark** [3] - 437:25, 442:6, 442:18  
**marked** [11] - 350:6, 350:14, 351:10, 352:25, 362:24, 368:16, 370:6, 462:1, 462:16, 470:19, 478:8  
**markups** [1] - 524:8  
**mask** [2] - 422:2, 501:3  
**master's** [1] - 417:25  
**matches** [1] - 442:16  
**materials** [2] - 476:16, 476:18  
**Matter** [1] - 532:15  
**matter** [7] - 420:16, 443:15, 491:12, 496:11, 510:19, 523:23, 525:15  
**matters** [5] - 482:19, 493:19, 504:21,

## ALL WORD INDEX

16

506:21, 527:16  
**mayb7e** [1] - 353:19  
**mean** [25] - 355:16, 355:24, 356:19, 359:25, 360:24, 365:1, 365:13, 365:18, 366:2, 375:10, 423:8, 440:15, 441:5, 442:6, 486:10, 488:4, 498:3, 501:5, 505:11, 506:4, 508:5, 520:19, 521:25, 525:4, 525:17  
**meaning** [5] - 364:8, 411:10, 449:19, 451:23, 486:21  
**Meaning** [1] - 386:25  
**meanings** [1] - 495:10  
**means** [6] - 423:9, 438:6, 443:18, 469:12, 491:21, 515:22  
**measure** [1] - 505:7  
**mechanical** [1] - 346:25  
**meet** [20] - 359:6, 360:7, 361:19, 362:16, 424:25, 425:4, 426:12, 431:9, 431:12, 431:24, 432:25, 437:1, 437:3, 437:22, 440:9, 440:19, 440:20, 441:21  
**meeting** [31] - 358:11, 367:8, 372:16, 375:4, 378:18, 378:23, 379:20, 383:22, 384:16, 385:22, 386:8, 386:21, 387:8, 387:19, 395:24, 396:6, 396:22, 397:4, 397:19, 399:19, 406:5, 423:18, 423:20, 423:21, 424:7, 424:23, 425:10, 426:15, 427:22, 435:21, 437:11  
**meetings** [10] - 376:23, 376:24, 378:9, 378:22, 380:7, 394:20, 395:19, 403:15, 424:9, 424:10  
**member** [1] - 503:3  
**members** [2] - 448:14, 461:7  
**memory** [4] - 404:6, 410:10, 410:20, 426:17  
**mention** [3] - 371:21, 436:19, 453:18  
**mentioned** [17] - 351:5, 356:9, 364:6, 399:7, 418:13, 435:23, 436:17, 439:12, 450:11, 468:8, 468:23, 469:6, 470:8, 473:21, 476:19, 479:12, 487:5  
**mentions** [3] - 356:16, 429:17, 441:1  
**merely** [5] - 514:24, 516:11, 516:18, 517:8, 517:13  
**message** [27] - 359:24, 361:18, 428:4, 428:6, 428:9, 428:14, 428:23, 429:1, 429:6, 429:9, 429:15, 429:23, 429:24, 432:5, 435:3, 435:19, 436:7, 436:13, 436:21, 439:20, 441:1, 441:9, 441:11, 450:22, 451:19, 452:12, 452:14  
**messages** [26] - 359:14, 359:15, 360:5, 382:17, 382:24, 382:25, 383:1, 411:12, 423:11, 427:15, 427:17, 427:20, 427:24, 429:19, 436:4, 436:17, 438:10, 439:15, 440:22, 447:7, 447:12, 450:11, 454:13, 454:22  
**Messaging** [2] - 423:2, 426:25  
**messaging** [3] - 423:4, 427:15, 442:8  
**met** [14] - 350:18, 350:21, 351:5, 351:21, 351:22, 353:11, 370:2, 371:11, 372:14, 382:6, 383:3, 423:21,

425:11, 434:13  
**Metro** [1] - 443:7  
**Michael** [7] - 422:13, 445:4, 463:12, 463:15, 464:3, 479:19, 481:23  
**michi** [1] - 442:3  
**microphone** [5] - 348:25, 415:15, 416:16, 465:9, 466:23  
**mid** [1] - 491:25  
**Middle** [1] - 437:24  
**middle** [4] - 362:6, 433:13, 440:19, 494:21  
**midtown** [1] - 352:17  
**midway** [1] - 499:3  
**might** [13] - 377:12, 386:20, 387:4, 389:23, 393:14, 395:25, 412:20, 456:7, 478:14, 481:3, 488:1, 505:9, 507:10  
**MIN** [1] - 437:13  
**min** [1] - 432:8  
**mind** [5] - 395:13, 407:13, 456:9, 456:13, 494:6  
**mine** [1] - 375:18  
**minimis** [1] - 420:16  
**minimum** [1] - 468:18  
**minor** [3] - 503:12, 522:24, 523:5  
**minute** [2] - 407:12, 415:9  
**minutes** [13] - 362:25, 379:18, 405:12, 405:14, 407:19, 434:22, 482:18, 491:6, 529:4, 529:11, 529:17, 529:18, 529:21  
**mirror** [1] - 516:21  
**mirroring** [1] - 521:23  
**misleading** [3] - 524:19, 524:21, 525:1  
**mission** [2] - 467:22, 467:23  
**misstates** [1] - 513:2  
**mistaken** [6] - 514:25, 516:12, 516:13, 516:18, 517:8, 517:14  
**moment** [12] - 350:7, 351:16, 372:4, 380:17, 446:22, 457:15, 464:22, 474:6, 478:14, 482:3, 489:8, 518:23  
**moments** [1] - 375:20  
**Monday** [4] - 384:14, 492:14, 493:1  
**Monero** [1] - 418:18  
**money** [178] - 348:6, 348:22, 349:6, 355:2, 355:14, 355:18, 355:19, 356:7, 356:10, 357:17, 357:19, 358:6, 360:14, 361:4, 361:21, 363:14, 363:18, 363:22, 363:25, 364:4, 364:8, 364:14, 364:17, 364:19, 364:24, 366:12, 366:13, 371:22, 377:12, 377:23, 377:24, 378:7, 379:3, 379:4, 380:2, 382:3, 382:7, 382:9, 385:1, 387:3, 387:4, 389:19, 390:3, 390:4, 390:6, 390:7, 390:11, 390:16, 390:19, 390:22, 392:2, 392:11, 392:17, 392:18, 392:19, 393:7, 394:10, 394:13, 395:7, 395:21, 396:2, 399:9, 399:16, 400:24, 401:2, 408:9, 408:13, 413:20, 414:11, 414:12, 414:13, 414:17, 416:7, 437:6, 441:2, 441:5,

441:6, 443:18, 443:19, 452:9, 453:21, 454:3, 454:4, 454:9, 454:14, 454:24, 455:1, 458:23, 459:9, 459:11, 460:20, 461:10, 462:13, 462:23, 467:21, 468:5, 468:14, 468:17, 468:23, 468:25, 469:2, 469:3, 469:4, 469:6, 469:8, 469:9, 469:20, 469:22, 469:24, 470:1, 470:10, 472:24, 473:13, 473:19, 473:20, 473:22, 474:20, 475:20, 475:21, 476:11, 476:13, 476:23, 477:12, 477:15, 481:10, 481:19, 481:24, 485:12, 485:13, 485:17, 485:20, 486:6, 486:14, 487:7, 487:13, 488:5, 488:10, 488:11, 488:23, 489:11, 489:12, 494:21, 495:13, 495:17, 496:14, 496:15, 496:18, 497:14, 498:21, 498:22, 498:24, 499:12, 510:22, 511:15, 515:20, 523:13, 524:2, 524:20, 525:9, 525:12, 525:21, 525:24, 526:6, 527:19  
**Money** [4] - 408:14, 469:8, 471:4, 474:10  
**monitor** [1] - 424:6  
**morning** [12] - 372:12, 372:13, 405:12, 407:10, 415:24, 483:24, 490:6, 491:25, 493:6, 493:22, 496:2, 522:8  
**most** [2] - 484:24, 525:25  
**mostly** [1] - 505:7  
**motherfuckers** [1] - 355:15  
**motion** [3] - 484:20, 484:22, 525:21  
**motions** [1] - 420:3  
**move** [8] - 352:1, 441:25, 459:24, 463:2, 471:11, 479:5, 504:13, 505:15  
**moved** [1] - 508:19  
**moves** [1] - 467:1  
**movie** [2] - 384:22, 384:23  
**movies** [1] - 402:3  
**moving** [4] - 433:10, 434:2, 437:7, 481:4  
**Moving** [2] - 472:18, 473:12  
**MR** [138] - 347:5, 347:12, 349:2, 349:8, 351:2, 352:5, 361:14, 363:4, 369:3, 371:4, 372:4, 372:6, 372:11, 374:23, 380:14, 380:16, 380:19, 381:12, 382:11, 391:2, 392:22, 393:1, 396:18, 396:20, 400:2, 404:10, 405:13, 407:8, 409:15, 409:18, 409:24, 414:18, 414:23, 417:8, 417:10, 419:2, 420:14, 438:18, 439:7, 446:4, 446:6, 447:4, 450:19, 450:23, 450:24, 451:14, 452:16, 452:21, 453:12, 453:13, 454:16, 455:6, 463:5, 464:12, 471:14, 479:8, 482:8, 483:4, 483:6, 484:22, 485:6, 490:2, 490:5, 490:13, 491:1, 491:7, 491:10, 491:12, 491:17, 492:7, 492:17, 493:2, 493:13, 496:12, 497:1, 498:19, 499:1, 499:10, 499:12, 499:18, 499:21, 500:16, 500:23, 501:2, 501:7, 501:10, 501:12, 501:15, 501:24, 502:2, 502:5, 502:12, 504:11,

## ALL WORD INDEX

17

505:3, 505:15, 505:17, 505:20,  
507:21, 508:19, 508:21, 510:2,  
510:10, 511:18, 511:21, 513:18,  
513:22, 514:8, 518:14, 518:18,  
520:23, 521:9, 522:4, 522:24, 523:5,  
523:13, 523:17, 523:19, 524:5, 525:3,  
526:8, 526:19, 526:23, 527:2, 527:25,  
528:13, 528:17, 528:20, 529:16,  
529:19, 529:21, 530:3, 531:11,  
531:17, 531:20, 531:25, 532:8, 533:7,  
533:12  
**MS** [161] - 347:23, 348:17, 350:2,  
350:4, 350:23, 351:9, 351:16, 352:1,  
352:8, 352:21, 352:25, 353:5, 353:8,  
353:21, 353:23, 354:2, 354:9, 354:11,  
354:14, 354:19, 354:24, 355:5,  
355:20, 356:13, 357:22, 358:12,  
358:16, 358:23, 359:2, 359:9, 361:17,  
362:20, 362:23, 363:8, 364:10, 365:6,  
368:15, 368:25, 370:1, 370:5, 370:25,  
391:5, 391:9, 391:18, 391:21, 392:24,  
393:3, 404:11, 404:15, 408:1, 408:3,  
410:4, 410:13, 412:16, 413:3, 413:24,  
414:6, 414:20, 415:3, 415:7, 415:23,  
420:10, 421:9, 422:1, 422:11, 427:7,  
434:1, 438:23, 443:22, 443:23, 444:9,  
444:12, 445:10, 445:12, 445:24,  
446:9, 446:22, 446:25, 450:21,  
452:18, 454:18, 454:20, 455:4, 456:3,  
456:18, 456:24, 457:10, 458:5,  
461:24, 462:15, 463:1, 463:9, 463:20,  
464:8, 464:18, 466:5, 470:18, 470:21,  
470:23, 471:10, 471:18, 472:2,  
472:18, 473:12, 474:3, 475:1, 475:15,  
478:7, 478:19, 479:4, 480:1, 481:1,  
481:6, 482:3, 482:5, 482:14, 485:24,  
489:20, 494:14, 494:16, 494:19,  
495:11, 495:20, 496:3, 497:3, 497:11,  
497:14, 497:18, 497:24, 498:8, 500:4,  
500:13, 500:20, 502:22, 503:5,  
503:13, 503:23, 504:2, 510:14,  
510:20, 514:21, 516:9, 516:21,  
517:15, 519:21, 524:17, 525:8, 527:1,  
527:7, 528:7, 529:3, 529:7, 529:9,  
530:25, 532:10, 533:6, 533:8, 533:11,  
533:13, 533:15, 533:17  
**MSB** [4] - 474:7, 474:9, 475:8, 476:15  
**MSBs** [3] - 474:21, 474:22, 475:8  
**MSG** [1] - 435:9  
**multiple** [3] - 399:7, 436:4, 449:4  
**MURRAY** [1] - 346:19  
**music** [1] - 434:8  
**must** [5] - 459:13, 459:14, 469:25,  
507:25, 523:7  
**Mustafa** [12] - 421:11, 421:23, 422:5,  
422:12, 446:20, 462:12, 463:11,  
463:17, 463:18, 464:3, 479:19, 481:22  
**MUSTAFA** [1] - 346:6  
**Mustang** [1] - 439:25  
**Mustangy** [16] - 422:13, 422:24,

422:25, 444:17, 444:18, 444:19,  
444:22, 445:16, 445:23, 446:16,  
462:22, 463:23, 463:25, 464:4,  
481:17, 481:23  
**muzzling** [1] - 388:1

## N

**name** [19] - 371:12, 403:2, 411:17,  
415:16, 422:24, 443:2, 443:8, 444:17,  
445:4, 446:18, 450:16, 451:9, 452:4,  
457:21, 465:10, 472:11, 472:13,  
474:17, 485:23  
**named** [2] - 421:11, 478:23  
**namely** [1] - 509:11  
**Namely** [1] - 487:12  
**names** [2] - 422:12, 473:3  
**narcotics** [19] - 509:9, 510:5, 510:23,  
511:24, 512:3, 512:9, 512:11, 513:16,  
514:19, 518:9, 518:18, 518:19,  
518:20, 518:25, 519:18, 520:4,  
520:11, 521:22, 522:21  
**narrative** [3] - 487:3, 487:11, 517:4  
**nature** [3] - 449:25, 452:4, 506:22  
**NAVARRO** [9] - 346:17, 347:5, 347:12,  
363:4, 520:23, 521:9, 531:11, 531:17,  
531:20  
**near** [1] - 409:6  
**nearby** [1] - 386:18  
**necessarily** [9] - 376:13, 384:8, 384:9,  
387:13, 398:10, 401:25, 402:2, 509:8,  
525:4  
**necessary** [4] - 508:13, 508:16, 520:7,  
527:5  
**need** [21] - 360:12, 360:22, 364:21,  
364:23, 382:11, 435:11, 459:24,  
460:5, 460:6, 482:18, 493:20, 502:4,  
502:6, 502:11, 504:19, 507:5, 512:1,  
519:9, 530:22, 531:3, 532:2  
**needed** [2] - 400:24, 452:9  
**needs** [1] - 508:4  
**negative** [2] - 515:6  
**negligence** [1] - 517:13  
**negligent** [4] - 514:25, 516:12, 516:18,  
517:8  
**negotiations** [1] - 423:18  
**Nektalov** [6] - 509:18, 510:8, 510:15,  
511:3, 511:13, 522:15  
**NEKTALOV** [1] - 509:18  
**Network** [1] - 466:10  
**network** [2] - 418:11  
**never** [12] - 372:14, 382:18, 394:3,  
394:7, 394:16, 401:4, 403:10, 403:11,  
411:23, 487:25, 506:21, 530:20  
**NEW** [1] - 346:1  
**new** [1] - 500:10  
**New** [33] - 346:6, 346:15, 346:16,  
346:20, 346:21, 368:21, 374:7,  
374:14, 374:16, 411:10, 417:17,  
430:7, 434:20, 436:18, 444:23,

446:17, 457:11, 458:8, 458:13, 459:9,  
459:12, 459:19, 460:1, 460:3, 460:17,  
461:4, 461:7, 462:14, 462:20, 462:23,  
464:5, 486:3  
**news** [1] - 374:12  
**next** [41] - 354:4, 355:4, 359:19, 360:7,  
360:10, 360:17, 360:19, 361:6, 362:4,  
419:5, 420:22, 423:17, 425:10,  
425:13, 430:18, 430:25, 431:6, 432:3,  
432:11, 432:21, 433:10, 434:2, 437:7,  
440:8, 441:23, 442:24, 443:10,  
455:10, 456:6, 456:15, 457:8, 457:25,  
474:3, 511:21, 517:22, 518:6, 519:24,  
519:25, 522:24, 524:10, 525:12  
**Next** [1] - 415:2  
**nickname** [1] - 451:11  
**nine** [1] - 476:20  
**NOLAN** [1] - 346:23  
**NolanEDNY@aol.com** [1] - 346:24  
**non** [1] - 349:11  
**non-issues** [1] - 349:11  
**nonbelief** [1] - 517:9  
**nonetheless** [1] - 489:12  
**noon** [2] - 492:5, 529:1  
**normally** [1] - 507:14  
**note** [5] - 391:11, 494:25, 495:22,  
511:3, 528:5  
**noted** [2] - 457:2, 507:20  
**notes** [2] - 488:8, 530:9  
**nothing** [9] - 383:1, 401:13, 407:8,  
446:25, 454:16, 455:4, 457:19, 465:3,  
492:11  
**Nothing** [3] - 414:23, 482:5, 504:11  
**notion** [2] - 505:8, 507:10  
**November** [8] - 351:23, 383:14,  
390:14, 391:3, 396:12, 403:19,  
404:10, 414:9  
**number** [23] - 371:17, 371:19, 393:11,  
399:6, 411:4, 412:23, 429:21, 443:3,  
449:22, 449:23, 450:15, 451:3, 451:6,  
463:13, 463:16, 463:23, 463:25,  
470:14, 472:11, 479:20, 488:17,  
492:8, 498:23  
**Number** [2] - 469:24, 488:9  
**numbered** [2] - 354:6, 354:17  
**numbers** [6] - 412:25, 443:5, 443:6,  
451:4, 505:9  
**numerous** [1] - 487:19  
**NY** [1] - 346:24  
**NYOD** [2] - 438:3, 438:8  
**NYPD** [11] - 417:23, 436:18, 436:19,  
438:8, 439:10, 439:11, 439:12,  
442:14, 442:17, 442:20, 487:10

## O

**o'clock** [1] - 456:13  
**O'Kain** [34] - 349:20, 349:22, 354:25,  
372:12, 380:25, 391:24, 393:6,  
407:18, 410:14, 410:16, 410:18,



## ALL WORD INDEX

18

414:25, 417:2, 417:3, 418:6, 421:14,  
422:15, 423:16, 423:21, 423:24,  
425:8, 430:17, 489:6, 490:8, 491:14,  
502:24, 502:25, 503:2, 503:6, 503:11,  
503:17, 503:22, 504:2, 504:6  
**O'KAIN** [2] - 349:23, 533:4  
**oath** [1] - 349:22  
**obfuscate** [1] - 441:7  
**object** [5] - 438:18, 439:7, 504:14,  
505:20, 524:15  
**objected** [1] - 522:4  
**objecting** [9] - 500:25, 501:16, 508:24,  
509:11, 509:20, 522:13, 522:16,  
528:15, 528:18  
**objection** [23] - 348:15, 348:16, 351:1,  
352:4, 369:2, 371:3, 446:3, 446:6,  
463:4, 471:13, 479:7, 496:6, 502:22,  
503:14, 505:14, 506:16, 507:20,  
508:18, 522:11, 522:15, 528:6,  
528:11, 528:16  
**Objection** [6] - 361:14, 374:23,  
414:18, 417:8, 417:10, 419:2  
**objectionable** [1] - 508:7  
**objections** [4] - 491:5, 500:15, 500:22,  
500:24  
**obligation** [1] - 519:10  
**obligations** [1] - 479:16  
**obliquely** [1] - 454:9  
**observe** [1] - 424:25  
**observed** [2] - 425:4, 426:12  
**obtained** [4] - 384:6, 427:4, 447:18,  
459:4  
**obvious** [5] - 513:20, 515:14, 515:17,  
519:6, 519:7  
**obviously** [6] - 347:15, 485:9, 485:14,  
487:11, 489:9, 520:13  
**occasions** [5] - 386:9, 393:11, 426:10,  
477:17, 487:19  
**occur** [1] - 399:8  
**occurred** [1] - 420:1  
**occurring** [1] - 376:14  
**October** [2] - 346:7, 429:8  
**OF** [3] - 346:1, 346:3, 346:11  
**offense** [1] - 394:6  
**offer** [3] - 387:19, 387:23, 446:1  
**offered** [4] - 407:2, 450:5, 487:11,  
526:14  
**offering** [2] - 366:13, 366:16  
**office** [3] - 458:12, 458:13, 532:10  
**OFFICE** [1] - 346:14  
**officer** [3] - 382:14, 385:3, 426:5  
**Officer** [2] - 467:8, 467:10  
**officers** [2] - 439:13  
**official** [2] - 461:14, 477:19  
**officials** [1] - 470:17  
**often** [4] - 497:19, 506:19, 506:24  
**once** [5] - 358:10, 387:12, 397:22,  
420:19, 435:21  
**One** [1] - 372:4  
**one** [86] - 350:7, 351:16, 354:3, 354:7,

354:15, 355:14, 356:24, 356:25,  
359:13, 363:4, 373:7, 374:24, 376:23,  
379:24, 380:2, 380:17, 380:20, 381:7,  
382:6, 391:6, 394:20, 394:25, 395:11,  
399:11, 403:14, 409:7, 412:23,  
413:18, 415:9, 428:9, 435:18, 436:10,  
436:13, 439:9, 440:22, 441:9, 450:10,  
450:19, 453:1, 453:18, 454:8, 454:9,  
464:22, 468:21, 469:10, 469:24,  
473:24, 480:5, 480:6, 482:3, 488:1,  
489:23, 492:21, 494:10, 494:12,  
496:25, 498:9, 500:10, 501:25,  
503:10, 503:16, 504:7, 506:13,  
506:23, 507:4, 508:7, 515:24, 517:3,  
517:6, 517:7, 520:24, 521:17, 523:23,  
524:6, 524:9, 524:10, 525:5, 525:18,  
525:23, 526:16, 528:2, 530:5, 531:7  
**ones** [4] - 418:17, 418:18, 454:6, 454:7  
**online** [7] - 363:17, 364:24, 382:14,  
382:15, 409:8, 409:11, 429:4  
**ooOoo** [1] - 532:16  
**open** [9] - 347:1, 407:13, 411:2, 420:9,  
421:1, 456:9, 482:24, 492:2, 494:6  
**open-ended** [1] - 420:9  
**opened** [1] - 367:17  
**opening** [1] - 529:16  
**openingly** [3] - 385:12, 385:19, 387:18  
**openly** [1] - 384:18  
**operated** [1] - 525:19  
**operates** [1] - 526:16  
**operating** [4] - 373:21, 377:7, 412:1,  
525:5  
**operation** [2] - 408:13, 424:5  
**operations** [1] - 424:2  
**operators** [1] - 459:14  
**opinion** [2] - 395:14, 440:23  
**opinions** [1] - 439:17  
**opportunities** [1] - 394:21  
**opportunity** [4] - 387:19, 387:23,  
395:4, 395:6  
**opposed** [7] - 353:4, 503:24, 513:4,  
514:1, 515:12, 517:24, 518:1  
**opposite** [1] - 512:4  
**option** [1] - 495:2  
**order** [5] - 380:23, 423:19, 505:18,  
507:23, 523:6  
**ordering** [1] - 433:14  
**orders** [1] - 473:22  
**ordinary** [2] - 471:6, 479:1  
**organization** [2] - 460:9, 460:12  
**origin** [2] - 441:7, 443:20  
**original** [1] - 510:20  
**originally** [1] - 528:14  
**otherwise** [7] - 357:14, 461:17, 478:2,  
489:23, 512:13, 515:16, 524:7  
**ought** [1] - 496:7  
**outset** [1] - 489:9  
**Outside** [1] - 401:19  
**outside** [14] - 366:5, 366:6, 375:16,  
375:23, 376:2, 376:11, 376:15, 409:1,

457:6, 494:23, 495:15, 496:19,  
497:20, 499:18  
**over-inclusive** [1] - 500:7  
**overall** [1] - 522:14  
**overhead** [3] - 438:22, 479:25, 530:10  
**overrule** [3] - 505:14, 506:16, 522:14  
**Overruled** [1] - 417:11  
**overruled** [2] - 438:20, 439:8  
**overtly** [1] - 507:16  
**owed** [2] - 356:7, 356:9  
**own** [5] - 398:13, 403:25, 483:7,  
483:11, 488:13  
**owner** [2] - 470:12, 472:20  
**owners** [2] - 459:14, 460:8  
**owns** [1] - 472:24  
**oxies** [1] - 413:6  
**oxy** [7] - 402:16, 402:19, 402:22,  
402:23, 402:25, 487:21, 487:24  
**oxycodone** [5] - 403:2, 403:12,  
412:13, 413:7, 413:15

## P

**p.m** [4] - 359:14, 362:11, 431:11, 457:2  
**Page** [38] - 391:9, 391:16, 391:18,  
393:3, 404:12, 409:6, 409:14, 410:25,  
411:5, 412:19, 412:24, 414:2, 428:3,  
428:22, 429:5, 429:23, 430:18, 431:6,  
431:17, 432:4, 432:12, 433:2, 433:10,  
433:11, 471:18, 472:18, 474:4,  
478:19, 478:20, 479:6, 479:17,  
494:14, 501:10, 504:13, 505:15,  
508:19  
**PAGE** [1] - 533:3  
**page** [102] - 353:4, 353:18, 353:19,  
353:20, 353:21, 353:25, 354:3, 354:4,  
354:12, 354:14, 354:15, 354:16,  
354:17, 355:4, 359:13, 360:3, 360:10,  
362:4, 362:6, 362:10, 363:2, 369:8,  
399:25, 409:13, 411:4, 412:22,  
412:25, 413:1, 419:5, 420:22, 429:14,  
429:17, 430:18, 431:6, 431:18, 432:1,  
432:3, 432:11, 433:10, 433:13,  
433:19, 434:2, 434:3, 434:15, 434:16,  
435:3, 435:4, 436:6, 436:20, 436:24,  
436:25, 437:7, 437:8, 437:18, 437:19,  
439:19, 440:8, 440:17, 440:19,  
441:10, 441:23, 442:9, 442:24,  
443:10, 446:14, 446:18, 450:19,  
450:22, 451:2, 452:18, 452:22,  
455:10, 457:25, 465:14, 474:3, 480:8,  
481:7, 481:14, 481:15, 481:16,  
494:13, 501:9, 512:14, 522:25, 523:5,  
523:11, 523:13, 527:2, 528:8, 531:13  
**pages** [11] - 429:24, 430:1, 436:21,  
436:23, 439:21, 439:22, 441:16,  
441:17, 453:19, 478:21, 478:22  
**paid** [1] - 469:4  
**paint** [1] - 417:21  
**PAMELA** [2] - 346:12, 347:2

## ALL WORD INDEX

19

**paper** [5] - 355:3, 470:17, 473:7, 474:16, 531:15  
**paragraph** [15] - 494:21, 495:8, 499:4, 504:9, 504:12, 505:17, 505:21, 507:2, 507:4, 508:22, 508:24, 511:19, 513:5, 514:23, 528:8  
**parked** [1] - 437:17  
**Part** [3] - 376:19, 474:7, 475:4  
**part** [52] - 361:15, 365:14, 365:21, 367:18, 372:21, 386:5, 393:18, 396:6, 396:7, 397:19, 405:16, 405:21, 405:23, 406:1, 407:4, 408:9, 408:14, 412:3, 420:2, 448:6, 471:20, 471:22, 472:2, 472:7, 472:9, 472:20, 473:1, 473:13, 473:17, 473:18, 474:5, 475:1, 475:2, 475:6, 475:7, 497:8, 501:16, 502:15, 503:19, 503:25, 504:4, 506:1, 507:4, 513:8, 513:9, 516:24, 517:23, 521:25, 526:1  
**partially** [1] - 522:17  
**particular** [10] - 365:2, 417:4, 426:11, 458:14, 467:4, 487:10, 502:10, 506:17, 513:11, 522:16  
**parties** [4] - 423:9, 437:12, 482:19, 489:10  
**partly** [1] - 421:5  
**partner** [7] - 356:16, 356:17, 401:7, 417:1, 488:10, 488:11, 488:14  
**partner's** [2] - 414:11, 414:12  
**partnered** [1] - 416:24  
**parts** [1] - 522:12  
**pass** [1] - 508:21  
**past** [1] - 416:14  
**PATRICK** [2] - 349:23, 533:4  
**Patrick** [3] - 417:1, 421:14, 422:15  
**pats** [1] - 504:17  
**Pause** [3] - 349:13, 350:8, 446:24  
**pause** [6] - 353:8, 357:25, 360:22, 367:11, 413:3, 414:6  
**paused** [11] - 353:7, 353:14, 355:7, 355:22, 356:15, 357:24, 363:3, 363:7, 365:8, 366:9, 366:24  
**pay** [5] - 356:10, 405:9, 419:1, 459:15, 526:4  
**pays** [1] - 405:21  
**PCS** [1] - 443:7  
**peer** [4] - 418:11, 422:17  
**peer-to-peer** [2] - 418:11, 422:17  
**people** [33] - 356:8, 356:9, 377:14, 384:15, 384:17, 384:25, 385:1, 385:7, 385:15, 385:17, 386:3, 386:5, 389:18, 393:13, 418:17, 422:17, 424:25, 426:9, 427:21, 443:7, 450:8, 451:24, 454:21, 459:8, 469:19, 480:6, 487:2, 505:10, 505:13, 506:25, 526:4, 526:10  
**people's** [1] - 505:5  
**per** [2] - 353:1, 380:8  
**perceives** [1] - 504:5  
**percent** [3] - 397:14, 400:15, 441:19  
**Percent** [1] - 428:21

**percentage** [1] - 397:13  
**perfect** [3] - 405:14, 407:10, 433:1  
**perform** [3] - 461:20, 462:13, 477:22  
**performing** [1] - 423:22  
**perhaps** [6] - 456:14, 473:14, 480:1, 491:2, 491:3, 507:21  
**Perhaps** [1] - 386:7  
**period** [2] - 394:11, 501:23  
**permission** [11] - 350:23, 351:9, 352:22, 362:20, 368:25, 422:1, 427:5, 427:9, 444:9, 446:9, 461:24  
**person** [23] - 387:7, 426:4, 426:7, 427:25, 442:4, 443:16, 448:19, 450:14, 451:7, 451:11, 456:20, 468:21, 469:10, 469:12, 472:21, 472:24, 473:2, 473:4, 497:15, 499:5, 507:8, 508:2, 519:8  
**personally** [4] - 425:14, 461:12, 477:14, 477:24  
**personnel** [1] - 460:10  
**perspective** [1] - 528:9  
**pertaining** [2] - 418:25, 477:15  
**phone** [32] - 397:24, 398:8, 398:9, 398:12, 398:13, 398:15, 398:19, 398:20, 400:8, 400:10, 400:13, 400:17, 401:6, 427:3, 427:16, 443:9, 447:8, 447:16, 450:7, 450:15, 451:3, 451:6, 451:12, 451:24, 451:25, 452:24, 453:10, 502:24, 502:25, 503:6, 503:19  
**phones** [1] - 449:24  
**photo** [2] - 381:1, 381:18  
**photograph** [3] - 350:18, 358:18, 359:4  
**photographs** [1] - 447:11  
**phrase** [1] - 517:6  
**phrased** [1] - 518:3  
**physically** [1] - 474:22  
**pickier** [1] - 511:19  
**picture** [1] - 426:16  
**pieces** [1] - 490:10  
**pills** [5] - 363:22, 364:1, 364:6, 372:21, 375:5  
**pivot** [1] - 480:5  
**place** [10] - 379:12, 400:11, 418:10, 424:7, 431:16, 431:24, 449:13, 476:6, 506:10  
**placed** [1] - 372:17  
**places** [2] - 437:23, 443:7  
**plain** [2] - 495:10, 511:13  
**plaintiff** [3] - 346:4, 508:10, 508:11  
**plan** [1] - 530:16  
**planned** [1] - 368:13  
**play** [13] - 352:22, 353:5, 355:5, 362:20, 368:2, 391:2, 392:22, 404:12, 409:21, 409:25, 410:5, 412:16, 412:18  
**played** [7] - 391:23, 393:4, 404:4, 404:17, 413:2, 414:5, 503:19  
**played/audio** [11] - 353:7, 353:14, 355:7, 355:22, 356:15, 357:24, 363:3,

363:7, 365:8, 366:9, 366:24  
**player** [1] - 532:6  
**playing** [11] - 353:12, 355:20, 356:13, 357:22, 357:25, 364:10, 365:6, 366:8, 366:23, 387:15, 413:24  
**plays** [1] - 412:22  
**Plaza** [2] - 346:15, 346:24  
**PLLC** [1] - 346:20  
**plural** [2] - 500:14, 502:23  
**point** [18] - 353:17, 361:11, 373:7, 378:13, 390:23, 399:11, 437:11, 448:8, 475:8, 497:1, 511:4, 513:5, 514:21, 515:25, 516:13, 522:24, 526:3, 526:16  
**pointed** [2] - 488:9, 489:5  
**pointedly** [1] - 486:22  
**police** [20] - 367:17, 387:4, 389:5, 389:8, 389:18, 389:19, 389:23, 390:6, 390:16, 392:2, 392:6, 392:18, 393:7, 394:1, 394:4, 414:16, 438:12, 438:15, 439:6, 487:12  
**Police** [2] - 417:17, 436:18  
**poorly** [1] - 518:3  
**popular** [1] - 402:3  
**populating** [1] - 398:21  
**port** [1] - 346:20  
**portion** [5] - 362:23, 367:12, 391:2, 404:4, 412:17  
**portions** [5] - 352:22, 362:20, 391:13, 530:14, 530:22  
**pose** [1] - 476:20  
**position** [1] - 348:23  
**possible** [7] - 347:13, 393:7, 408:12, 420:13, 495:21, 527:12, 531:12  
**possibly** [4] - 388:14, 390:6, 390:7, 476:1  
**post** [1] - 428:17  
**Postal** [1] - 469:4  
**posting** [1] - 428:8  
**potential** [2] - 426:24, 492:21  
**potentially** [5] - 365:4, 388:24, 488:12, 507:2, 508:7  
**pounds** [1] - 363:21  
**practice** [6] - 385:7, 385:14, 460:17, 461:7, 477:10, 530:3  
**practices** [1] - 459:19  
**precisely** [1] - 511:11  
**predicate** [1] - 511:7  
**prefer** [2] - 489:24, 490:6  
**preferable** [1] - 489:25  
**preference** [5] - 489:21, 490:2, 492:19, 497:4, 498:4  
**prejudice** [1] - 348:18  
**prepaid** [1] - 473:22  
**prepared** [1] - 489:24  
**preparing** [1] - 349:11  
**preponderance** [1] - 519:14  
**present** [8] - 347:3, 421:1, 424:10, 438:18, 451:25, 482:24, 493:12, 510:10

## ALL WORD INDEX

20

**presentation** [2] - 347:10, 482:18  
**preserve** [2] - 485:4, 528:16  
**preserved** [1] - 505:14  
**presiding** [1] - 347:2  
**pressure** [1] - 492:24  
**pressured** [1] - 492:13  
**presume** [1] - 420:2  
**presumptively** [1] - 518:21  
**pretend** [1] - 513:25  
**PRETRIAL** [1] - 346:11  
**pretrial** [1] - 420:3  
**pretty** [3] - 402:2, 476:11, 505:8  
**preventive** [1] - 505:7  
**previous** [2] - 360:2, 475:7  
**Previously** [1] - 380:24  
**previously** [16] - 349:24, 350:6, 351:10, 358:13, 358:24, 359:10, 368:16, 370:6, 381:15, 427:11, 445:9, 445:10, 445:19, 462:16, 470:19, 478:8  
**price** [5] - 380:5, 382:4, 429:14, 436:8, 436:9  
**primary** [4] - 377:19, 470:14, 474:7, 474:25  
**principles** [2] - 460:9, 460:13  
**print** [1] - 523:2  
**priority** [1] - 490:17  
**privacy** [1] - 505:5  
**probability** [10] - 511:10, 518:8, 519:17, 520:3, 520:10, 520:21, 521:4, 521:5, 521:7, 521:21  
**problem** [4] - 363:5, 472:5, 496:21, 513:2  
**procedure** [1] - 504:14  
**procedures** [1] - 504:21  
**proceed** [3] - 421:8, 483:2, 489:24  
**Proceedings** [1] - 346:25  
**proceedings** [3] - 349:13, 350:8, 446:24  
**proceeds** [34] - 486:16, 488:6, 506:6, 507:9, 507:13, 508:12, 508:16, 509:9, 510:5, 510:23, 511:23, 511:24, 512:2, 512:3, 512:7, 512:8, 512:10, 512:11, 513:16, 514:18, 514:19, 515:2, 515:20, 516:7, 516:19, 516:23, 517:16, 517:17, 518:9, 519:17, 520:4, 520:11, 521:22, 522:21  
**process** [6] - 374:15, 443:19, 475:5, 475:12, 490:13, 491:17  
**processing** [1] - 491:13  
**produced** [3] - 346:25, 447:14, 447:15  
**product** [4] - 410:15, 473:13, 473:22, 474:1  
**products** [2] - 410:19, 411:8  
**profile** [5] - 422:21, 422:23, 422:25, 423:1, 487:3  
**profit** [24] - 523:21, 523:23, 523:24, 524:1, 524:6, 524:9, 524:14, 524:19, 525:1, 525:4, 525:6, 525:7, 525:18, 525:20, 526:5, 526:11, 526:17, 526:21, 526:22, 527:2, 527:10,

527:13, 527:14  
**program** [7] - 468:1, 468:2, 468:3, 468:17, 470:7, 475:24, 476:16  
**project** [1] - 530:10  
**projector** [2] - 480:3, 531:12  
**prompted** [1] - 348:19  
**promptly** [1] - 493:24  
**proof** [4] - 378:6, 488:17, 505:18, 507:24  
**properly** [2] - 506:11, 524:12  
**property** [2] - 506:6, 508:23  
**proposal** [5] - 494:24, 495:7, 500:9, 522:2, 527:8  
**propose** [2] - 522:1, 522:18  
**proposed** [5] - 409:23, 505:25, 509:15, 521:11, 528:8  
**proposing** [1] - 499:7  
**prosecutor** [1] - 384:15  
**Prospect** [1] - 440:16  
**prostitution** [1] - 355:19  
**protect** [3] - 459:18, 468:6  
**protecting** [1] - 467:20  
**prove** [14] - 505:24, 507:25, 512:4, 513:12, 514:14, 519:4, 519:10, 519:14, 520:9, 520:20, 521:6, 521:20, 522:20, 523:7  
**provide** [8] - 358:20, 371:8, 424:7, 467:12, 472:8, 472:22, 473:17, 530:3  
**provided** [5] - 370:17, 384:4, 397:16, 463:25  
**provides** [4] - 433:8, 470:11, 470:16, 498:23  
**providing** [2] - 423:23, 472:9  
**province** [2] - 506:10, 508:25  
**public** [6] - 437:11, 437:23, 476:7, 476:10, 495:18, 526:14  
**publicly** [1] - 527:21  
**publish** [20] - 350:24, 351:3, 352:2, 352:6, 358:13, 358:25, 359:9, 369:1, 369:6, 371:5, 427:8, 444:9, 444:25, 446:9, 463:3, 463:7, 471:12, 471:16, 479:6, 479:10  
**published** [20] - 350:11, 351:12, 352:7, 358:15, 359:1, 359:12, 368:17, 369:7, 371:1, 371:6, 404:16, 444:8, 445:2, 445:11, 445:20, 446:13, 452:20, 463:8, 471:17, 479:11  
**pull** [14] - 358:23, 359:9, 368:15, 380:13, 380:21, 412:15, 416:15, 437:21, 445:7, 452:16, 463:9, 463:20, 466:23, 494:10  
**pulling** [2] - 479:12, 481:3  
**punctual** [1] - 349:17  
**purported** [1] - 510:5  
**purportedly** [1] - 486:24  
**purpose** [12] - 378:10, 459:16, 468:3, 468:5, 470:8, 493:7, 495:5, 515:2, 516:6, 516:15, 527:15, 527:18  
**purposes** [6] - 348:10, 349:6, 399:2, 489:12, 495:6, 496:20

**pursuant** [4] - 428:10, 441:11, 446:7, 504:13  
**put** [14] - 348:1, 353:23, 442:2, 450:19, 492:19, 495:12, 496:7, 500:24, 513:25, 515:5, 516:24, 522:7, 531:20, 532:6  
**puts** [3] - 492:24, 505:25, 522:6  
**putting** [1] - 515:12

## Q

**qualifies** [10] - 348:3, 348:5, 476:15, 494:25, 495:6, 495:16, 498:17, 499:24, 500:8, 500:11  
**qualify** [2] - 348:22, 495:24  
**qualifying** [1] - 470:3  
**quarter** [2] - 456:5, 456:15  
**Queens** [13] - 351:6, 430:7, 430:14, 432:23, 432:25, 433:6, 433:8, 434:19, 440:3, 440:11, 440:12, 440:14, 441:22  
**questioning** [1] - 349:19  
**questions** [17] - 372:6, 389:24, 392:14, 395:2, 395:17, 400:25, 403:4, 403:11, 408:6, 408:16, 413:19, 414:20, 420:9, 464:9, 464:12, 476:20, 482:8  
**quick** [6] - 421:6, 430:22, 432:9, 456:12, 509:14, 528:4  
**quickly** [3] - 379:15, 400:4, 419:4  
**quite** [8] - 358:7, 358:9, 389:13, 420:16, 486:10, 489:22, 507:1, 527:16

## R

**raise** [6] - 385:22, 395:16, 395:17, 420:14, 457:16, 464:25  
**raised** [6] - 348:24, 403:20, 494:20, 496:1, 509:14, 527:10  
**raises** [2] - 388:16, 522:10  
**ran** [1] - 347:6  
**ranging** [1] - 481:12  
**rarely** [1] - 506:20  
**rasing** [1] - 496:22  
**rate** [10] - 380:7, 380:8, 380:18, 381:4, 381:7, 381:21, 381:24, 397:7, 428:20  
**rather** [6] - 357:25, 487:16, 489:18, 496:15, 506:24, 509:9  
**rational** [1] - 511:8  
**re** [1] - 514:13  
**re-word** [1] - 514:13  
**reach** [5] - 377:11, 431:4, 492:23, 492:24, 511:8  
**reached** [1] - 507:1  
**reaction** [1] - 395:14  
**read** [38] - 359:14, 359:15, 360:5, 374:12, 409:20, 409:22, 410:11, 411:1, 423:11, 428:14, 428:16, 429:1, 429:9, 430:3, 431:21, 431:25, 433:12, 434:16, 435:8, 437:2, 437:8, 439:24, 440:18, 441:18, 442:10, 471:25,



## ALL WORD INDEX

21

495:13, 499:10, 499:14, 499:22,  
502:12, 513:13, 520:25, 521:19,  
524:12, 530:11, 531:21  
**reader** [1] - 395:13  
**reading** [16] - 360:4, 360:11, 430:2,  
431:8, 432:5, 432:13, 434:3, 435:6,  
436:7, 437:1, 437:19, 439:24, 441:24,  
442:25, 443:11, 530:8  
**reads** [3] - 476:17, 501:12, 501:19  
**ready** [8] - 362:9, 407:11, 411:3,  
441:19, 456:5, 456:15, 482:21, 531:13  
**real** [6] - 360:15, 363:22, 388:19,  
439:3, 443:8, 486:7  
**realistically** [1] - 491:8  
**really** [20] - 349:17, 419:4, 420:16,  
438:3, 480:3, 490:18, 490:21, 503:8,  
503:17, 504:3, 507:4, 509:5, 513:14,  
514:3, 516:9, 516:13, 517:3, 517:9,  
517:25, 526:6  
**realtime** [2] - 461:2, 477:5  
**reason** [12] - 348:6, 364:1, 372:22,  
377:19, 383:24, 386:6, 389:2, 421:5,  
497:4, 502:13, 514:1, 525:11  
**reasonable** [20] - 485:1, 485:11,  
486:12, 507:8, 508:1, 511:9, 512:10,  
514:15, 515:1, 516:5, 518:7, 519:4,  
519:8, 520:1, 520:2, 520:9, 520:20,  
521:6, 521:20, 523:8  
**reasons** [5] - 393:25, 395:1, 434:11,  
439:9, 508:8  
**rebut** [1] - 492:3  
**rebuttal** [2] - 529:6, 529:8  
**recapitulate** [1] - 530:21  
**receipt** [4] - 358:18, 381:1, 381:4,  
381:18  
**receive** [3] - 368:8, 379:15, 400:11  
**received** [7] - 351:4, 369:5, 379:22,  
399:5, 446:12, 494:13  
**receiving** [2] - 379:25, 380:4  
**recess** [2] - 407:20, 456:25  
**recite** [2] - 497:8, 519:5  
**reckoning** [1] - 353:19  
**recognize** [11] - 350:14, 351:18,  
358:17, 370:10, 462:17, 462:24,  
464:6, 471:1, 471:5, 478:11, 478:24  
**recognizing** [1] - 489:3  
**recollect** [1] - 392:13  
**recollection** [2] - 410:21, 411:7  
**record** [14] - 348:1, 348:22, 379:1,  
415:16, 446:8, 457:22, 461:5, 465:10,  
477:7, 478:25, 485:5, 485:7, 486:19,  
531:24  
**recorded** [4] - 346:25, 352:19, 353:16,  
362:18  
**recording** [18] - 353:10, 364:12,  
366:10, 366:25, 367:13, 391:23,  
391:24, 393:4, 393:5, 404:17, 412:25,  
413:2, 413:4, 414:5, 414:7, 414:9,  
479:16  
**recordings** [7] - 376:24, 387:16,

391:14, 395:20, 398:2, 439:3, 532:1  
**records** [20] - 460:18, 460:22, 460:24,  
461:5, 461:14, 467:25, 468:16, 470:6,  
476:3, 476:4, 476:5, 476:25, 477:2,  
477:8, 477:15, 477:19, 478:17,  
478:18, 481:12, 504:21  
**recovered** [4] - 443:25, 449:20, 450:6,  
453:10  
**recross** [1] - 455:5  
**red** [1] - 422:8  
**redirect** [2] - 407:25, 454:17  
**REDIRECT** [4] - 408:2, 454:19, 533:8,  
533:13  
**redundancy** [2] - 524:4, 524:5  
**refer** [8] - 391:8, 401:14, 409:5,  
410:10, 410:11, 413:6, 414:1, 504:8  
**reference** [14] - 356:7, 356:8, 356:11,  
387:3, 401:20, 402:10, 402:13,  
402:16, 404:18, 429:20, 452:9,  
453:19, 454:22, 473:10  
**Reference** [1] - 452:8  
**referenced** [7] - 405:19, 406:22,  
406:25, 428:1, 447:7, 450:10, 486:22  
**references** [11] - 387:8, 387:9, 420:4,  
420:6, 421:4, 421:6, 430:15, 454:8,  
486:25, 487:8, 488:16  
**referencing** [4] - 387:18, 401:19,  
454:13, 503:17  
**referring** [8] - 357:17, 357:20, 386:17,  
423:15, 424:16, 476:1, 498:4, 525:10  
**refers** [2] - 402:4, 498:16  
**reflect** [2] - 422:9, 488:4  
**reflection** [1] - 488:12  
**refresh** [5] - 400:17, 404:5, 410:20,  
410:21, 411:7  
**refuse** [4] - 360:14, 361:4, 361:19,  
413:15  
**refused** [1] - 360:15  
**refusing** [1] - 516:1  
**regard** [1] - 504:11  
**regarding** [3] - 375:16, 466:20, 470:12  
**regardless** [1] - 510:21  
**register** [1] - 469:25  
**registered** [4] - 476:22, 481:23, 486:4,  
488:2  
**registering** [1] - 475:18  
**registrant** [6] - 471:20, 471:21, 472:8,  
472:9, 472:22, 473:16  
**registration** [6] - 470:1, 470:9, 479:19,  
481:10, 481:18, 482:1  
**Registration** [1] - 471:4  
**registrations** [4] - 477:11, 477:14,  
479:23  
**regular** [6] - 413:13, 460:17, 460:24,  
461:7, 477:2, 477:10  
**regularly** [8] - 523:21, 523:22, 524:13,  
524:19, 526:3, 526:21, 527:9, 527:17  
**regulates** [2] - 468:11, 468:19  
**regulations** [1] - 458:22  
**regulators** [1] - 466:21

**regulatory** [2] - 466:20, 476:19  
**reiterates** [1] - 364:15  
**related** [4] - 444:4, 458:22, 476:1,  
494:19  
**relating** [6] - 471:24, 473:19, 473:23,  
474:1, 475:8, 475:10  
**relation** [2] - 392:17, 393:6  
**relevance** [2] - 374:17, 421:4  
**relevant** [4] - 421:7, 504:4, 520:14,  
524:11  
**relying** [1] - 510:15  
**remain** [3] - 415:9, 457:14, 464:22  
**remained** [1] - 367:23  
**remaining** [1] - 355:10  
**remains** [1] - 519:24  
**remark** [1] - 488:11  
**remarks** [1] - 488:10  
**remember** [11] - 352:11, 387:12,  
392:12, 409:3, 410:1, 411:21, 426:15,  
434:12, 449:21, 456:7, 503:21  
**Remember** [1] - 459:1  
**remembers** [1] - 420:2  
**remind** [4] - 349:21, 417:12, 443:17,  
530:13  
**remittent** [1] - 498:24  
**remove** [2] - 422:2, 505:4  
**removing** [3] - 507:22, 524:15, 525:12  
**renewed** [1] - 485:9  
**repeat** [1] - 384:2  
**repeated** [2] - 389:4, 393:10  
**repeatedly** [1] - 395:9  
**repeating** [1] - 500:23  
**replacement** [1] - 519:2  
**replies** [2] - 434:19, 440:9  
**report** [4] - 442:14, 442:20, 442:22,  
478:23  
**reported** [1] - 442:18  
**reporter** [6] - 347:19, 396:16, 417:13,  
459:1, 483:23  
**Reporter** [1] - 346:23  
**reporting** [1] - 479:16  
**reports** [13] - 380:11, 467:24, 468:16,  
470:5, 473:10, 473:11, 474:19,  
475:25, 476:1, 476:2, 476:4  
**reports, I'm** [1] - 475:25  
**representing** [1] - 503:9  
**request** [10] - 409:20, 473:6, 474:15,  
478:7, 485:9, 508:17, 526:19, 526:25,  
530:18, 530:25  
**requested** [2] - 527:3, 530:23  
**requesting** [3] - 473:18, 473:23, 475:6  
**require** [3] - 443:8, 468:16, 485:15  
**required** [18] - 459:11, 469:22, 471:22,  
472:8, 472:22, 473:9, 473:16, 475:21,  
475:23, 475:24, 476:3, 486:3, 486:4,  
505:24, 506:3, 506:5, 508:10, 511:6  
**requirement** [4] - 459:21, 513:3,  
518:16, 524:25  
**requirements** [5] - 459:8, 467:12,

## ALL WORD INDEX

22

469:19, 476:6, 511:15  
**requires** [1] - 479:15  
**requiring** [2] - 467:23, 470:9  
**requisite** [2] - 507:17, 513:14  
**research** [3] - 407:14, 456:9, 494:5  
**residence** [6] - 424:22, 426:2, 444:24, 448:9, 448:11, 449:8  
**resolve** [2] - 521:11, 522:11  
**resolved** [1] - 397:22  
**resolves** [2] - 528:5, 528:21  
**respect** [10] - 416:7, 441:5, 443:18, 443:19, 463:22, 482:17, 485:4, 486:6, 506:18, 508:16  
**respond** [15] - 362:7, 363:20, 364:7, 365:11, 395:9, 395:16, 395:18, 401:9, 402:11, 402:14, 402:18, 413:8, 426:14, 433:5, 440:10  
**responded** [5] - 401:4, 404:22, 404:24, 405:16, 413:6  
**responds** [3] - 362:12, 362:13, 406:14  
**response** [6] - 360:24, 364:25, 403:22, 428:16, 430:9, 437:9  
**responsibilities** [3] - 458:19, 467:9, 502:18  
**responsible** [2] - 421:19, 495:21  
**rest** [10] - 349:12, 356:5, 360:17, 361:6, 483:4, 485:6, 489:17, 493:7, 494:4, 496:8  
**rested** [1] - 482:17  
**restful** [1] - 349:16  
**resting** [1] - 347:12  
**restrictions** [1] - 373:9  
**restroom** [1] - 347:6  
**rests** [2] - 482:15, 493:13  
**result** [2] - 449:19, 513:23  
**results** [8] - 461:22, 463:14, 463:18, 464:1, 477:24, 478:5, 478:22, 479:18  
**resume** [2] - 349:19, 349:20  
**retrieve** [2] - 461:9, 477:11  
**return** [1] - 445:22  
**returned** [2] - 347:21, 448:16  
**reveal** [1] - 479:23  
**review** [11] - 370:12, 370:20, 427:17, 427:24, 429:19, 436:17, 439:15, 441:1, 443:24, 453:24, 477:24  
**reviewed** [13] - 427:2, 429:16, 435:20, 436:1, 436:14, 438:11, 439:3, 441:11, 444:1, 450:2, 451:21, 479:2, 528:7  
**reviewing** [1] - 410:7  
**revised** [3] - 522:7, 522:19, 528:22  
**reword** [1] - 515:5  
**Ridgewood** [1] - 433:6  
**right-hand** [1] - 428:13  
**rise** [6] - 407:15, 456:10, 457:3, 482:22, 493:9, 494:7  
**risk** [3] - 437:15, 501:8  
**risking** [1] - 437:13  
**risky** [2] - 361:1, 365:11  
**RN** [1] - 435:13

**Robert** [2] - 457:11, 457:23  
**ROBERT** [2] - 458:1, 533:14  
**rock** [1] - 442:4  
**role** [8] - 418:21, 423:20, 424:4, 424:6, 459:5, 466:13, 466:18, 471:8  
**room** [5] - 426:2, 448:1, 449:11, 517:24, 518:1  
**roughly** [1] - 407:19  
**rule** [2] - 384:20, 385:6  
**Rule** [2] - 446:2, 446:7  
**rules** [1] - 504:18  
**run** [4] - 408:12, 416:21, 524:20, 527:25  
**running** [6] - 355:2, 366:12, 396:2, 421:19, 421:22, 526:3  
**rush** [1] - 442:2  
**rushed** [2] - 490:24, 491:24

## S

**safe** [1] - 437:11  
**safer** [2] - 357:6, 357:10  
**safety** [2] - 423:23, 440:9  
**SAHIL** [2] - 404:11, 404:15  
**SAHLI** [10] - 346:20, 346:22, 391:5, 391:9, 391:18, 391:21, 392:24, 393:3, 450:21, 452:18  
**Sahli** [12] - 380:21, 382:11, 391:2, 391:15, 391:17, 392:22, 404:10, 450:19, 451:14, 452:16, 453:12, 522:13  
**sake** [1] - 451:15  
**sale** [9] - 373:9, 373:15, 374:8, 374:16, 376:11, 376:17, 383:8, 384:1, 473:21  
**sales** [1] - 376:14  
**salient** [1] - 526:1  
**Sands** [1] - 524:22  
**sat** [1] - 449:11  
**satisfied** [3] - 399:20, 399:22, 515:4  
**satisfy** [2] - 517:6, 520:7  
**Saturday** [4] - 360:8, 360:21, 431:5, 432:15  
**saved** [3] - 388:14, 461:2, 477:5  
**saw** [6] - 377:21, 389:23, 428:7, 429:11, 435:9, 449:6  
**Saw** [1] - 428:17  
**sayings** [1] - 384:24  
**scam** [1] - 357:23  
**scams** [1] - 443:1  
**scared** [1] - 364:25  
**science** [1] - 417:24  
**scope** [2] - 388:24, 408:15  
**scratching** [1] - 514:22  
**screen** [12] - 350:9, 350:12, 370:8, 381:13, 450:25, 452:23, 462:2, 462:9, 470:24, 472:1, 472:4, 480:4  
**scroll** [1] - 362:5  
**scrolled** [1] - 508:21  
**search** [33] - 427:5, 428:10, 441:11,

443:25, 447:18, 447:21, 448:11, 448:13, 448:16, 449:8, 449:19, 461:8, 461:14, 461:20, 461:22, 463:11, 463:14, 463:22, 464:3, 477:10, 477:19, 477:22, 477:24, 478:5, 478:18, 478:22, 479:18, 479:22, 481:10, 481:18, 481:21  
**searches** [2] - 461:12, 477:14  
**searching** [4] - 449:5, 449:14, 524:17, 524:22  
**seat** [8] - 349:15, 363:12, 407:24, 415:14, 457:5, 465:6, 482:25, 494:9  
**seated** [1] - 363:9  
**Second** [2] - 509:17, 510:16  
**second** [11] - 363:4, 367:12, 444:23, 475:1, 481:7, 485:13, 494:10, 505:17, 507:24, 513:8, 516:8  
**secondly** [1] - 511:6  
**Secrecy** [6] - 466:14, 466:16, 466:18, 466:20, 467:12, 479:14  
**secrecy** [1] - 466:15  
**secret** [1] - 506:22  
**Secretary** [1] - 475:18  
**secretive** [1] - 506:19  
**section** [14] - 354:21, 357:25, 364:12, 412:15, 414:9, 420:11, 458:14, 471:19, 472:20, 473:13, 474:5, 475:2, 498:19, 501:10  
**Section** [5] - 417:19, 417:21, 498:15, 500:5, 501:11  
**security** [7] - 371:19, 386:17, 387:1, 424:7, 463:13, 463:16, 479:20  
**see** [46] - 349:15, 350:9, 350:12, 350:13, 351:13, 351:14, 351:17, 368:18, 368:19, 370:7, 370:9, 375:12, 380:25, 381:16, 393:14, 394:1, 394:4, 400:16, 411:19, 415:25, 421:23, 424:7, 424:23, 432:15, 444:13, 445:13, 446:4, 446:19, 450:25, 462:5, 470:24, 470:25, 472:15, 473:15, 478:12, 478:15, 480:6, 490:16, 509:13, 521:10, 522:5, 524:23, 528:4, 530:13, 532:5, 532:12  
**seeing** [2] - 359:19, 392:6  
**seek** [1] - 352:22  
**seeking** [1] - 383:8  
**seem** [2] - 395:11, 456:23  
**sees** [1] - 368:12  
**segment** [5] - 353:10, 353:16, 354:3, 366:10, 392:22  
**segregated** [1] - 399:15  
**seize** [3] - 389:24, 390:6, 414:17  
**Seized** [1] - 394:14  
**seized** [8] - 390:3, 390:19, 392:18, 394:13, 413:20, 414:11, 414:12, 414:14  
**seizure** [2] - 393:7, 394:10  
**select** [1] - 429:18  
**selected** [2] - 377:14, 377:17  
**sell** [8] - 362:7, 363:21, 366:6, 397:9,

## ALL WORD INDEX

23

401:4, 428:7, 428:17, 440:2  
**seller** [3] - 434:10, 435:7, 440:1  
**sellers** [2] - 426:24, 469:3  
**Selling** [1] - 376:3  
**selling** [29] - 363:17, 365:22, 373:1, 375:5, 376:5, 376:8, 382:14, 382:21, 383:4, 383:7, 383:24, 384:6, 384:25, 387:20, 403:16, 404:3, 404:19, 409:1, 410:19, 411:12, 412:1, 412:2, 412:4, 412:7, 412:9, 412:12, 431:14, 485:21, 489:7  
**send** [7] - 358:3, 364:17, 521:10, 528:22, 531:5, 532:2, 532:4  
**sending** [1] - 361:18  
**sends** [2] - 429:1, 531:9  
**Senior** [2] - 467:8, 467:9  
**sense** [4] - 515:7, 521:9, 529:2, 529:23  
**sent** [9] - 356:17, 356:22, 371:9, 382:17, 445:16, 447:13, 450:2, 530:14, 530:18  
**sentence** [48] - 495:8, 495:12, 496:17, 498:17, 499:22, 500:10, 501:12, 503:12, 507:3, 507:22, 507:24, 508:3, 508:6, 511:21, 513:11, 515:5, 516:3, 516:9, 516:21, 516:24, 516:25, 517:3, 517:7, 517:12, 517:19, 517:21, 517:22, 518:6, 518:11, 518:12, 519:2, 519:3, 519:19, 519:24, 519:25, 520:2, 520:18, 521:16, 521:18, 521:23, 523:19, 523:20, 524:16  
**sentences** [2] - 514:22, 517:5  
**separate** [3] - 386:9, 427:20, 453:2  
**September** [3] - 350:21, 383:11, 396:11  
**sequence** [1] - 375:13  
**series** [3] - 358:5, 447:11, 453:1  
**serves** [1] - 459:18  
**Service** [2] - 469:4, 471:4  
**service** [11] - 462:13, 462:23, 468:23, 468:24, 468:25, 469:2, 473:19, 475:5, 475:12, 481:19, 526:4  
**Services** [11] - 456:20, 457:12, 458:9, 459:14, 460:7, 460:18, 461:4, 461:8, 462:12, 462:21, 464:6  
**services** [17] - 458:23, 460:16, 468:14, 469:25, 470:1, 470:10, 472:25, 473:13, 474:2, 474:10, 474:20, 476:12, 476:13, 481:10, 498:24, 525:9, 527:21  
**SESSION** [1] - 457:1  
**set** [7] - 362:3, 423:18, 424:21, 425:10, 527:14, 530:7, 531:2  
**setout** [1] - 476:6  
**setting** [1] - 365:14  
**seven** [6] - 362:10, 378:19, 378:22, 397:14, 432:3, 437:18  
**seventh** [1] - 406:4  
**several** [4] - 358:5, 374:2, 468:8, 486:25  
**shady** [1] - 437:23

**shattering** [1] - 456:23  
**sheet** [1] - 456:22  
**Shernelle** [1] - 396:17  
**shipping** [3] - 444:5, 445:16, 445:22  
**shooting** [1] - 356:4  
**short** [1] - 386:17  
**shorten** [1] - 517:20  
**shortened** [1] - 490:22  
**shorter** [3] - 482:20, 520:19, 522:22  
**shortly** [1] - 447:22  
**show** [12] - 350:5, 351:9, 358:12, 370:5, 427:7, 444:6, 444:25, 461:25, 462:15, 470:18, 478:7, 478:20  
**showed** [1] - 426:16  
**showing** [3] - 445:6, 445:18, 485:15  
**shown** [1] - 352:13  
**shows** [1] - 524:25  
**side** [4] - 428:13, 428:14, 445:8, 519:19  
**Side** [2] - 431:20, 431:23  
**side's** [1] - 531:6  
**sidebar** [4] - 419:4, 420:1, 420:21, 421:6  
**Sidebar** [1] - 419:6  
**sides** [2] - 486:10, 504:24  
**sides'** [1] - 493:25  
**Signal** [18] - 360:1, 367:9, 367:10, 382:17, 423:2, 423:3, 423:4, 423:5, 423:13, 423:14, 426:25, 427:15, 436:1, 436:2, 447:7, 450:6, 450:7, 451:19  
**signaled** [1] - 376:22  
**signed** [2] - 462:12, 462:21  
**similar** [1] - 506:17  
**similarly** [1] - 507:1  
**simply** [16] - 395:9, 400:16, 403:2, 403:24, 404:18, 410:1, 420:17, 487:12, 487:15, 495:7, 502:15, 504:23, 507:22, 509:21, 524:13, 525:19  
**sine** [1] - 374:2  
**singer** [1] - 529:14  
**SINGER** [131] - 346:19, 349:2, 349:8, 351:2, 352:5, 361:14, 369:3, 371:4, 372:4, 372:6, 372:11, 374:23, 380:14, 380:16, 380:19, 381:12, 382:11, 391:2, 392:22, 393:1, 396:18, 396:20, 400:2, 404:10, 405:13, 407:8, 409:15, 409:18, 409:24, 414:18, 414:23, 417:8, 417:10, 419:2, 420:14, 438:18, 439:7, 446:4, 446:6, 447:4, 450:19, 450:23, 450:24, 451:14, 452:16, 452:21, 453:12, 453:13, 454:16, 455:6, 463:5, 464:12, 471:14, 479:8, 482:8, 483:4, 483:6, 484:22, 485:6, 490:2, 490:5, 490:13, 491:1, 491:7, 491:10, 491:12, 491:17, 492:7, 492:17, 493:2, 493:13, 496:12, 497:1, 498:19, 499:1, 499:10, 499:12, 499:18, 499:21, 500:16, 500:23,

501:2, 501:7, 501:10, 501:12, 501:15, 501:24, 502:2, 502:5, 502:12, 504:11, 505:3, 505:15, 505:17, 505:20, 507:21, 508:19, 508:21, 510:2, 510:10, 511:18, 511:21, 513:18, 513:22, 514:8, 518:14, 518:18, 522:4, 522:24, 523:5, 523:13, 523:17, 523:19, 524:5, 525:3, 526:8, 526:19, 526:23, 527:2, 527:25, 528:13, 528:17, 528:20, 529:16, 529:19, 529:21, 530:3, 531:25, 532:8, 533:7, 533:12  
**Singer** [30] - 348:25, 372:9, 405:11, 414:22, 447:2, 464:11, 483:1, 483:10, 487:23, 490:1, 493:11, 493:16, 496:4, 498:13, 500:2, 500:15, 500:21, 502:9, 504:9, 509:24, 515:23, 518:17, 521:17, 522:3, 522:10, 522:13, 523:4, 525:16, 527:24, 528:11  
**singular** [1] - 504:8  
**sit** [3] - 407:22, 407:23, 493:4  
**site** [2] - 377:7, 377:15  
**sitting** [7] - 367:15, 399:13, 399:16, 422:6, 422:7, 437:10, 491:2  
**situation** [2] - 510:25, 511:12  
**six** [8] - 396:21, 430:1, 453:2, 475:2, 475:4, 475:6, 475:7  
**size** [2] - 435:17, 468:18  
**skip** [1] - 430:9  
**skipped** [1] - 353:19  
**Skipping** [1] - 433:2  
**skipping** [5] - 431:17, 434:15, 437:18, 440:17, 442:9  
**slightly** [1] - 482:20  
**slow** [1] - 529:3  
**slower** [4] - 396:15, 421:17, 458:24, 483:22  
**slowly** [1] - 417:12  
**small** [3] - 426:17, 435:24, 468:21  
**smaller** [2] - 357:6, 426:22  
**snitch** [1] - 443:16  
**social** [4] - 371:19, 463:13, 463:15, 479:20  
**sold** [9] - 373:10, 373:20, 374:21, 401:15, 410:15, 410:19, 411:8, 413:14, 524:8  
**solely** [1] - 493:6  
**solemnly** [2] - 457:17, 465:1  
**solid** [2] - 388:19, 399:9  
**solidified** [1] - 399:9  
**solo** [1] - 440:15  
**solves** [1] - 496:21  
**someone** [13] - 378:15, 385:25, 386:19, 386:25, 388:22, 401:21, 401:24, 403:16, 404:18, 428:6, 441:1, 476:17, 530:24  
**sometime** [1] - 390:11  
**sometimes** [4] - 379:14, 379:15, 492:23, 502:23  
**somewhat** [2] - 493:17, 507:15

## ALL WORD INDEX

24

**somewhere** [4] - 398:24, 437:11, 440:5, 440:20  
**son** [1] - 442:18  
**soon** [3] - 395:19, 493:22, 531:4  
**sooner** [1] - 490:23  
**SOPHIE** [1] - 346:23  
**sorry** [23] - 359:23, 375:1, 379:1, 380:18, 386:22, 391:6, 409:17, 409:19, 412:22, 434:10, 435:8, 437:6, 437:13, 438:2, 440:6, 440:21, 442:1, 452:22, 456:12, 479:24, 488:10, 498:19, 508:11  
**Sorry** [4] - 396:14, 431:14, 458:25, 459:2  
**sort** [8] - 356:8, 377:19, 385:14, 395:6, 492:21, 506:21, 520:17, 526:15  
**sorts** [1] - 418:24  
**sought** [1] - 400:12  
**sound** [2] - 355:3, 496:24  
**sounds** [2] - 364:19, 502:13  
**source** [9] - 486:8, 486:9, 487:6, 515:2, 516:6, 516:19, 516:23, 517:15, 524:18  
**speaker** [1] - 503:24  
**speaking** [3] - 366:25, 459:11, 469:22  
**Special** [19] - 348:8, 367:3, 367:4, 367:9, 415:3, 417:1, 418:5, 422:15, 423:16, 423:21, 423:24, 425:8, 495:24, 502:24, 502:25, 503:5, 504:2, 504:6  
**special** [10] - 357:11, 374:10, 416:10, 416:11, 416:12, 416:20, 416:21, 417:15, 418:21, 476:11  
**Specialist** [2] - 466:14, 466:18  
**specialty** [2] - 417:21, 418:7  
**specific** [6] - 367:5, 367:9, 392:16, 402:24, 502:13, 511:5  
**specifically** [8] - 376:14, 384:11, 395:15, 459:24, 469:14, 498:21, 507:6, 510:16  
**Specifically** [1] - 487:22  
**specifics** [2] - 400:9, 404:5  
**specified** [1] - 518:24  
**speculate** [1] - 496:8  
**speculation** [1] - 524:7  
**spell** [3] - 415:16, 457:21, 465:10  
**spills** [1] - 347:13  
**split** [3] - 356:25, 443:12, 443:13  
**splitting** [1] - 357:14  
**spoken** [1] - 507:15  
**spot** [2] - 433:15, 441:20  
**spurious** [1] - 487:15  
**spying** [1] - 505:10  
**stage** [1] - 365:14  
**stamp** [1] - 355:21  
**stand** [8] - 407:23, 415:8, 457:12, 457:14, 464:20, 464:22, 479:13, 490:8  
**standard** [5] - 492:12, 505:8, 509:11, 509:12, 530:25  
**standing** [4] - 415:9, 457:14, 464:22,

528:11  
**stands** [1] - 479:14  
**Starbucks** [13] - 350:18, 350:20, 430:7, 430:14, 431:16, 432:2, 433:7, 434:13, 434:19, 437:3, 437:6, 440:3, 441:22  
**staring** [1] - 400:15  
**start** [25] - 362:24, 364:17, 370:13, 380:19, 391:15, 412:25, 430:2, 431:8, 432:5, 432:13, 434:3, 435:6, 436:7, 437:1, 437:19, 439:23, 441:24, 442:25, 443:11, 456:6, 456:15, 462:7, 492:6, 493:24, 528:24  
**started** [11] - 377:16, 383:17, 386:9, 395:21, 396:2, 396:22, 416:13, 444:21, 448:13, 448:16, 466:13  
**Starting** [2] - 391:22, 393:3  
**starting** [19] - 359:13, 364:10, 414:4, 428:15, 429:1, 431:21, 432:5, 433:12, 434:17, 436:8, 437:1, 437:9, 439:23, 440:18, 441:18, 442:25, 443:11, 450:22, 493:6  
**starts** [3] - 353:23, 397:4, 499:4  
**State** [26] - 373:9, 373:21, 374:7, 374:15, 374:16, 375:23, 376:17, 409:2, 446:17, 457:12, 457:21, 458:8, 458:13, 459:9, 459:12, 459:19, 460:1, 460:4, 460:17, 461:4, 461:8, 462:14, 462:21, 462:23, 464:5, 486:3  
**state** [12] - 373:13, 373:15, 373:20, 374:22, 384:3, 384:10, 384:11, 395:4, 396:20, 415:16, 458:23, 465:10  
**statement** [6] - 444:16, 445:3, 489:1, 506:4, 507:12, 511:25  
**statements** [6] - 372:20, 438:15, 439:5, 489:3, 493:21, 493:25  
**STATES** [3] - 346:1, 346:3, 346:12  
**states** [5] - 374:21, 473:24, 473:25, 507:4, 512:12  
**States** [16] - 346:5, 346:14, 346:18, 408:24, 416:6, 469:20, 469:23, 474:22, 475:22, 494:23, 495:15, 496:20, 498:15, 499:19, 509:18, 524:23  
**stating** [3] - 412:4, 462:12, 462:22  
**status** [2] - 374:4, 374:9  
**statute** [14] - 348:4, 349:7, 466:17, 479:15, 495:1, 495:16, 496:20, 496:23, 497:2, 497:5, 498:14, 506:7, 526:1, 526:10  
**stay** [4] - 347:20, 398:5, 399:4, 498:14  
**staying** [1] - 491:3  
**stellar** [1] - 347:19  
**stenography** [1] - 346:25  
**step** [4] - 376:20, 407:17, 414:24, 455:7  
**steps** [4] - 398:23, 415:1, 459:17, 482:12  
**stick** [1] - 503:16  
**still** [30] - 349:21, 349:22, 364:23,

365:11, 365:16, 365:17, 367:19, 368:3, 374:18, 374:19, 375:9, 377:7, 408:20, 408:22, 435:13, 443:14, 451:25, 453:8, 476:18, 478:13, 499:13, 501:6, 507:17, 514:6, 515:13, 524:20, 528:6, 528:18, 532:6, 532:10  
**stips** [1] - 531:20  
**stop** [1] - 440:16  
**stopped** [7] - 388:21, 391:24, 393:5, 404:17, 413:4, 413:23, 414:7  
**story** [7] - 356:7, 363:16, 382:13, 394:23, 395:5, 412:2, 412:3  
**straightforward** [1] - 485:14  
**stray** [1] - 497:20  
**street** [2] - 413:13, 437:24  
**Street** [4] - 352:14, 440:3, 441:22, 444:23  
**strike** [1] - 516:25  
**strikes** [1] - 503:12  
**stuff** [3] - 411:9, 520:14, 532:13  
**subject** [1] - 481:17  
**submit** [2] - 459:15, 460:7  
**submitted** [2] - 482:1, 485:18  
**subpart** [3] - 497:23, 498:22, 499:4  
**substance** [3] - 365:24, 408:17, 408:20  
**Substances** [1] - 417:19  
**substances** [1] - 364:5  
**substitutes** [8] - 495:3, 498:2, 498:11, 498:16, 499:6, 499:9, 499:16  
**subtle** [1] - 502:17  
**successful** [1] - 408:13  
**suck** [1] - 440:7  
**sucks** [1] - 440:6  
**sufficient** [6] - 399:23, 483:14, 485:10, 485:18, 505:23, 512:1  
**suggest** [8] - 487:6, 496:17, 507:5, 512:6, 514:10, 517:21, 521:3, 522:19  
**suggested** [6] - 388:2, 388:15, 388:17, 489:23, 500:2, 500:3  
**suggesting** [4] - 453:20, 488:19, 489:2, 513:11  
**suggestion** [4] - 403:23, 496:25, 498:8, 498:10  
**suggests** [7] - 512:4, 514:5, 515:11, 517:4, 517:23, 518:5, 525:14  
**suit** [1] - 436:9  
**Suite** [1] - 346:19  
**sum** [1] - 493:5  
**summarized** [1] - 370:21  
**summary** [2] - 370:15, 380:15  
**summations** [2] - 492:20, 529:2  
**Sunday** [2] - 360:8, 360:21  
**Sunnyside** [7] - 351:6, 430:7, 431:16, 434:20, 444:23, 445:17, 445:23  
**superintendent** [1] - 458:22  
**supporting** [3] - 470:14, 475:4, 475:10  
**supposed** [3] - 401:7, 420:3, 425:11  
**surrounding** [1] - 372:23



## ALL WORD INDEX

25

**surveil** <sup>[1]</sup> - 424:9  
**surveiled** <sup>[1]</sup> - 424:11  
**surveillance** <sup>[13]</sup> - 416:22, 421:20, 423:22, 424:4, 424:6, 424:12, 424:15, 424:19, 425:1, 439:11, 439:14, 453:25, 503:3  
**suspected** <sup>[1]</sup> - 377:11  
**suspicion** <sup>[2]</sup> - 377:20, 378:4  
**suspicious** <sup>[1]</sup> - 378:10  
**suspicious** <sup>[4]</sup> - 378:16, 470:5, 474:20, 476:1  
**sustain** <sup>[2]</sup> - 505:18, 507:23  
**Sustained** <sup>[3]</sup> - 374:17, 414:19, 419:3  
**sustained** <sup>[2]</sup> - 348:15, 361:15  
**swear** <sup>[3]</sup> - 457:17, 464:23, 465:1  
**switching** <sup>[2]</sup> - 435:2, 445:25  
**sworn** <sup>[6]</sup> - 349:25, 415:10, 415:11, 457:15, 458:3, 466:3  
**sworn/affirmed** <sup>[1]</sup> - 415:20  
**synonyms** <sup>[1]</sup> - 418:15  
**system** <sup>[3]</sup> - 467:20, 468:7, 526:15

## T

**T-A-R-W-A-C-K-I** <sup>[1]</sup> - 457:23  
**T-H-E-O-D-O-R-E** <sup>[1]</sup> - 465:11  
**tab** <sup>[8]</sup> - 352:25, 410:24, 412:24, 414:2, 414:3, 476:11, 476:12  
**table** <sup>[3]</sup> - 422:2, 422:7, 437:10  
**tabs** <sup>[1]</sup> - 409:14  
**talks** <sup>[2]</sup> - 438:11, 510:22  
**tapes** <sup>[1]</sup> - 387:15  
**target** <sup>[1]</sup> - 502:9  
**Tarwacki** <sup>[6]</sup> - 457:11, 457:13, 457:23, 458:6, 464:16, 482:9  
**TARWACKI** <sup>[2]</sup> - 458:1, 533:14  
**tasked** <sup>[1]</sup> - 467:20  
**tax** <sup>[1]</sup> - 348:10  
**taxes** <sup>[2]</sup> - 405:9, 405:21  
**taxpayer** <sup>[2]</sup> - 470:13, 472:11  
**TD** <sup>[2]</sup> - 444:16, 445:3  
**team** <sup>[7]</sup> - 367:6, 367:15, 367:16, 448:6, 448:14, 449:20, 503:3  
**technical** <sup>[2]</sup> - 363:5, 364:18  
**technically** <sup>[1]</sup> - 503:20  
**technicians** <sup>[2]</sup> - 447:16, 450:3  
**Telegram** <sup>[5]</sup> - 441:25, 442:3, 442:7, 442:8, 442:16  
**telephone** <sup>[2]</sup> - 466:22, 476:21  
**term** <sup>[14]</sup> - 441:6, 450:11, 452:8, 453:19, 460:14, 495:17, 495:21, 497:4, 497:15, 520:25, 521:1, 524:2, 524:21  
**terms** <sup>[6]</sup> - 394:22, 472:8, 472:23, 485:14, 499:8, 507:18  
**terrible** <sup>[1]</sup> - 472:4  
**territories** <sup>[1]</sup> - 473:25  
**testified** <sup>[13]</sup> - 349:25, 372:16, 377:22, 384:13, 385:13, 394:25, 403:14,

415:20, 454:8, 458:3, 466:3, 503:22, 528:14  
**testify** <sup>[10]</sup> - 347:16, 483:7, 483:11, 483:15, 483:19, 483:25, 484:6, 484:7, 484:8, 484:12  
**testifying** <sup>[1]</sup> - 483:8  
**testimony** <sup>[15]</sup> - 348:18, 375:20, 450:5, 457:17, 465:1, 485:21, 486:9, 490:10, 491:15, 495:25, 496:9, 501:13, 501:22, 502:8, 502:19  
**text** <sup>[16]</sup> - 362:9, 376:21, 382:17, 382:24, 382:25, 383:1, 411:12, 428:12, 431:19, 432:17, 441:25, 451:18, 451:23, 454:13, 454:22  
**Text** <sup>[2]</sup> - 431:10, 432:20  
**texted** <sup>[1]</sup> - 431:14  
**texts** <sup>[2]</sup> - 376:22, 453:3  
**thankfully** <sup>[1]</sup> - 347:19  
**THE** <sup>[300]</sup> - 346:12, 346:19, 347:4, 347:9, 347:15, 348:14, 348:25, 349:6, 349:10, 349:15, 350:3, 351:1, 351:3, 351:11, 351:15, 352:4, 352:6, 352:24, 353:2, 353:17, 353:22, 353:25, 354:6, 354:10, 354:12, 354:17, 354:20, 361:15, 362:22, 363:1, 363:6, 369:2, 369:4, 369:6, 371:3, 371:5, 372:5, 372:8, 374:17, 374:24, 380:13, 380:15, 380:18, 380:24, 381:14, 391:4, 391:6, 391:7, 391:11, 391:19, 391:22, 393:22, 396:14, 396:19, 404:14, 405:11, 405:15, 407:9, 407:15, 407:17, 407:22, 409:17, 409:19, 409:25, 410:9, 410:16, 411:1, 414:19, 414:22, 414:24, 415:2, 415:5, 415:9, 415:13, 415:14, 415:17, 415:18, 416:15, 416:17, 416:18, 416:19, 417:9, 417:11, 419:3, 420:2, 420:12, 420:15, 421:2, 421:16, 422:4, 422:9, 427:10, 427:12, 427:13, 438:20, 438:24, 439:8, 444:11, 445:9, 446:3, 446:5, 446:7, 446:11, 446:23, 447:1, 454:17, 455:5, 455:7, 456:1, 456:4, 456:10, 456:12, 456:21, 457:3, 457:5, 457:13, 457:16, 457:20, 457:21, 457:23, 457:24, 458:24, 458:25, 459:1, 459:2, 459:3, 462:2, 462:4, 463:4, 463:6, 464:10, 464:14, 464:21, 464:24, 464:25, 465:4, 465:5, 465:7, 465:8, 465:11, 465:13, 466:23, 466:25, 467:1, 467:2, 467:3, 470:20, 470:22, 471:13, 471:15, 471:25, 472:4, 478:10, 479:7, 479:9, 479:24, 480:3, 481:2, 482:4, 482:7, 482:9, 482:11, 482:13, 482:16, 482:22, 482:25, 483:5, 483:9, 483:12, 483:13, 483:18, 483:20, 483:24, 484:1, 484:3, 484:5, 484:10, 484:11, 484:14, 484:15, 484:17, 484:18, 485:3, 485:8, 485:25, 489:25, 490:4, 490:12, 490:16, 491:5, 491:8, 491:11, 491:16,

491:20, 492:12, 492:18, 493:3, 493:9, 493:11, 493:15, 494:7, 494:9, 494:15, 494:18, 495:7, 495:19, 496:1, 496:4, 496:24, 497:6, 497:13, 497:17, 497:20, 497:25, 498:13, 498:20, 499:3, 499:11, 499:15, 499:20, 499:22, 500:9, 500:14, 500:17, 500:21, 501:1, 501:4, 501:9, 501:11, 501:14, 501:20, 502:1, 502:4, 502:6, 502:18, 503:2, 503:8, 503:16, 503:24, 504:7, 505:1, 505:4, 505:16, 505:19, 506:16, 508:5, 508:20, 509:4, 510:7, 510:12, 510:18, 511:3, 511:20, 513:2, 513:21, 513:24, 514:13, 515:8, 516:20, 517:2, 517:17, 518:15, 518:20, 519:23, 521:2, 521:13, 522:7, 523:1, 523:10, 523:15, 523:18, 524:4, 524:15, 525:11, 526:9, 526:22, 526:24, 527:4, 527:14, 528:1, 528:3, 528:4, 528:10, 528:15, 528:18, 528:21, 529:5, 529:12, 529:14, 529:17, 529:20, 529:22, 530:5, 531:2, 531:14, 531:16, 531:18, 531:23, 532:2, 532:12  
**theme** <sup>[2]</sup> - 473:7, 474:16  
**themselves** <sup>[1]</sup> - 474:23  
**THEODORE** <sup>[2]</sup> - 466:1, 533:16  
**Theodore** <sup>[2]</sup> - 464:19, 465:11  
**theory** <sup>[2]</sup> - 377:17, 526:2  
**thereabout** <sup>[1]</sup> - 407:11  
**thinking** <sup>[4]</sup> - 435:13, 497:6, 513:24, 521:14  
**thinks** <sup>[1]</sup> - 503:13  
**third** <sup>[4]</sup> - 452:22, 453:7, 481:14, 523:19  
**thousand** <sup>[4]</sup> - 426:21, 435:25, 436:3, 436:15  
**thread** <sup>[36]</sup> - 428:4, 428:23, 429:6, 429:23, 429:25, 430:18, 431:6, 431:17, 432:3, 432:11, 433:2, 433:11, 434:2, 434:15, 435:2, 435:3, 436:7, 436:21, 436:22, 437:7, 437:18, 439:20, 439:21, 440:17, 440:23, 441:9, 441:14, 441:16, 442:9, 450:15, 450:22, 451:16, 451:21, 452:14, 452:23, 453:9  
**threads** <sup>[10]</sup> - 427:21, 427:22, 428:9, 429:15, 435:19, 436:13, 441:1, 450:6, 450:7, 454:7  
**threaten** <sup>[1]</sup> - 437:22  
**threats** <sup>[1]</sup> - 452:4  
**three** <sup>[13]</sup> - 353:20, 386:8, 387:7, 387:10, 387:11, 392:3, 453:1, 472:20, 473:2, 503:7, 517:5, 523:9, 523:11  
**throughout** <sup>[3]</sup> - 424:23, 458:23, 518:21  
**Thursday** <sup>[1]</sup> - 346:7  
**tided** <sup>[1]</sup> - 395:25  
**tie** <sup>[1]</sup> - 422:8  
**timestamp** <sup>[12]</sup> - 353:5, 353:6, 353:12,

## ALL WORD INDEX

26

353:13, 355:5, 362:25, 365:7, 366:8,  
366:23, 391:20, 404:12, 413:23  
**timing** [1] - 405:14  
**Timing** [1] - 407:10  
**title** [3] - 416:9, 458:10, 467:7  
**Title** [3] - 497:18, 497:19, 497:21  
**today** [15] - 347:11, 347:14, 347:24,  
374:18, 377:8, 408:21, 421:24, 442:5,  
489:24, 490:4, 490:6, 492:1, 493:4,  
493:17, 493:19  
**together** [2] - 517:1, 522:6  
**tomorrow** [12] - 431:11, 435:14,  
441:21, 490:22, 491:4, 491:25, 492:1,  
492:20, 493:21, 493:22, 521:11,  
532:12  
**tonight** [2] - 521:10, 523:3  
**tons** [1] - 363:14  
**took** [8] - 358:9, 370:18, 394:21,  
426:1, 449:10, 449:13, 501:2  
**top** [25] - 354:4, 354:13, 362:24, 430:2,  
431:8, 432:13, 434:4, 434:17, 435:4,  
435:6, 437:20, 439:23, 441:14,  
441:24, 442:10, 442:25, 450:15,  
451:2, 452:15, 472:2, 472:20, 473:14,  
474:5, 505:17, 528:8  
**topic** [2] - 420:18, 527:10  
**tops** [1] - 434:22  
**total** [4] - 366:16, 366:17, 371:6, 371:8  
**touch** [2] - 402:13, 487:5  
**towards** [1] - 393:2  
**Trace** [1] - 417:21  
**track** [1] - 528:22  
**trade** [2] - 439:25, 486:14  
**Trade** [1] - 440:1  
**trader** [2] - 360:13, 361:3  
**trades** [1] - 438:2  
**Traffic** [1] - 440:9  
**trafficking** [22] - 416:8, 486:24, 509:9,  
510:6, 510:23, 511:24, 512:3, 512:9,  
512:11, 513:17, 514:20, 517:18,  
518:9, 518:18, 518:19, 518:20,  
518:25, 519:18, 520:5, 520:12,  
521:22, 522:21  
**training** [10] - 408:11, 411:11, 411:14,  
414:15, 441:4, 443:4, 454:21, 459:7,  
467:13, 469:18  
**transact** [5] - 364:15, 364:24, 366:14,  
377:19, 393:12  
**transacting** [3] - 356:21, 357:6, 357:8  
**transaction** [26] - 352:10, 352:16,  
352:19, 355:10, 358:9, 358:11, 359:5,  
364:9, 367:5, 381:1, 381:18, 396:11,  
399:9, 403:16, 404:2, 426:20, 437:22,  
442:1, 453:15, 454:3, 470:3, 470:15,  
474:7, 474:25, 516:7, 519:17  
**transactions** [38] - 362:3, 368:23,  
370:15, 370:19, 372:2, 376:6, 376:9,  
379:24, 380:2, 382:2, 382:3, 382:6,  
385:8, 393:12, 396:22, 398:6, 399:11,  
429:20, 435:17, 435:24, 443:13,

443:14, 454:5, 470:6, 476:2, 486:15,  
488:13, 488:18, 510:22, 511:23,  
512:8, 514:19, 515:3, 518:8, 520:4,  
520:11, 521:21  
**transcribed** [1] - 528:23  
**TRANSCRIPT** [1] - 346:11  
**transcript** [21] - 346:25, 353:1, 353:18,  
355:4, 362:24, 375:12, 391:8, 391:9,  
391:10, 391:19, 404:12, 409:6, 409:7,  
409:13, 410:7, 410:10, 410:22,  
412:17, 412:20, 414:2, 530:14  
**Transcription** [1] - 346:25  
**transcripts** [9] - 353:3, 391:13,  
409:20, 409:22, 410:1, 410:6, 532:1  
**transfer** [10] - 368:5, 379:8, 379:12,  
379:14, 397:23, 398:2, 494:23,  
495:14, 496:19, 499:18  
**transferred** [1] - 398:14  
**transferring** [2] - 398:3, 495:17  
**transmission** [7] - 469:9, 469:11,  
473:20, 497:16, 498:1, 499:5  
**transmit** [1] - 475:21  
**transmitter** [5] - 469:3, 469:7, 469:8,  
469:24, 470:10  
**transmitters** [2] - 469:6, 477:15  
**transmitting** [32] - 348:5, 348:6,  
348:22, 349:7, 459:9, 459:12, 460:20,  
461:10, 469:20, 469:23, 475:20,  
476:23, 477:12, 481:24, 485:13,  
485:17, 488:23, 494:21, 495:13,  
495:17, 496:14, 496:16, 496:18,  
497:14, 498:21, 498:22, 498:24,  
499:12, 523:14, 524:2, 525:13, 526:6  
**transported** [1] - 448:20  
**Treasury** [6] - 464:20, 466:9, 467:20,  
475:19, 481:25, 486:5  
**treated** [1] - 348:9  
**trial** [4] - 470:17, 473:7, 474:16,  
483:11  
**Triboro** [1] - 440:13  
**trickier** [1] - 509:4  
**tricky** [1] - 514:16  
**trip** [1] - 432:14  
**trouble** [6] - 357:1, 357:15, 365:5,  
366:2, 366:7, 376:1  
**true** [8] - 373:19, 455:2, 498:14,  
511:25, 513:18, 514:6, 521:2, 526:12  
**truly** [1] - 506:13  
**trusted** [1] - 358:6  
**truth** [7] - 457:18, 457:19, 465:2,  
465:3, 513:6  
**try** [14] - 387:19, 388:3, 394:21, 395:1,  
420:17, 426:16, 438:2, 442:22, 529:3,  
529:12, 530:9, 531:22, 531:23  
**trying** [14] - 356:2, 361:12, 403:23,  
441:7, 441:19, 443:20, 455:2, 486:23,  
487:6, 508:6, 513:14, 522:17, 527:19,  
529:23  
**Tuesday** [4] - 352:9, 362:8, 384:14,  
394:19

**turn** [9] - 352:25, 353:13, 362:10,  
409:13, 413:18, 471:18, 474:3,  
478:19, 531:13  
**Turning** [2] - 431:6, 475:1  
**turning** [12] - 355:4, 360:3, 362:4,  
362:23, 430:18, 432:3, 432:11, 440:8,  
441:23, 442:24, 443:10, 481:14  
**Twenty** [2] - 430:1, 494:18  
**Twenty-four** [1] - 494:18  
**Twenty-six** [1] - 430:1  
**two** [34] - 353:19, 353:21, 354:1,  
354:6, 354:12, 354:18, 360:3, 385:11,  
389:18, 392:2, 392:6, 393:14, 394:1,  
407:12, 435:3, 437:13, 442:1, 446:14,  
451:24, 452:6, 453:1, 453:8, 456:17,  
456:18, 471:20, 471:22, 472:9, 473:1,  
484:23, 485:1, 491:25, 492:5, 500:17,  
522:12  
**Two** [3] - 348:3, 494:16, 523:7  
**type** [4] - 467:24, 469:1, 470:12,  
475:10  
**types** [4] - 467:21, 467:25, 468:15,  
473:19  
**typical** [2] - 426:19, 435:17  
**Typically** [1] - 396:8  
**typically** [6] - 408:14, 411:15, 411:16,  
414:16, 438:6, 441:5  
**typo** [2] - 438:8, 501:14

## U

**U.S** [8] - 425:7, 464:20, 466:9, 467:19,  
469:4, 474:24, 475:18, 481:24  
**U.S.C** [2] - 497:12, 500:5  
**UC** [5] - 424:10, 424:14, 424:16, 487:5,  
488:9  
**ugliness** [1] - 452:1  
**ultimately** [1] - 364:19  
**Um-hmm** [2] - 378:25, 394:15  
**unaware** [1] - 449:3  
**uncertain** [4] - 364:2, 372:23, 514:8,  
514:9  
**uncover** [4] - 501:25, 502:2, 503:1,  
504:8  
**Under** [1] - 373:4  
**under** [30] - 348:2, 348:4, 349:2,  
349:22, 361:1, 365:24, 367:24,  
372:18, 373:2, 374:22, 408:17,  
408:20, 408:24, 422:24, 444:17,  
444:22, 445:4, 446:1, 449:16, 461:5,  
467:12, 477:7, 495:1, 495:16, 496:14,  
497:2, 497:11, 499:24, 500:11, 526:1  
**Undercover** [1] - 430:16  
**undercover** [49] - 358:19, 367:19,  
367:23, 368:1, 382:13, 385:3, 412:2,  
423:23, 423:24, 424:2, 424:4, 424:8,  
424:9, 424:17, 424:20, 425:1, 425:7,  
425:12, 425:20, 425:22, 426:7,  
438:15, 439:1, 439:6, 486:13, 486:22,  
486:24, 486:25, 487:20, 488:2, 488:6,

## ALL WORD INDEX

27

## V

489:6, 501:11, 501:13, 501:15,  
501:22, 501:24, 502:20, 503:3, 503:9,  
503:11, 503:18, 503:20, 503:25,  
504:5, 504:7, 504:22, 508:11, 515:19  
**undercut** [1] - 520:16  
**underlining** [1] - 478:2  
**underneath** [1] - 451:9  
**Understood** [1] - 378:1  
**understood** [14] - 355:17, 356:20,  
357:5, 360:1, 360:25, 361:8, 366:4,  
375:10, 385:14, 389:14, 389:22,  
390:1, 390:3, 514:6  
**underway** [1] - 448:12  
**unexpectedly** [1] - 493:18  
**unfortunately** [1] - 526:10  
**union** [1] - 468:13  
**unit** [2] - 458:14, 467:4  
**UNITED** [3] - 346:1, 346:3, 346:12  
**United** [16] - 346:5, 346:14, 346:18,  
408:23, 416:6, 469:20, 469:23,  
474:22, 475:21, 494:23, 495:15,  
496:19, 498:15, 499:19, 509:18,  
524:23  
**University** [1] - 418:1  
**unknown** [1] - 347:15  
**unlawful** [1] - 518:25  
**unlawfully** [1] - 505:10  
**unlicensed** [4] - 349:6, 485:13,  
485:17, 488:23  
**unnecessarily** [2] - 490:19, 490:21  
**unnecessary** [3] - 504:15, 507:3,  
520:19  
**unrealistic** [1] - 505:13  
**unrelated** [1] - 377:23  
**unusual** [2] - 387:17, 492:11  
**unwittingly** [1] - 468:5  
**up** [56] - 348:1, 353:13, 356:2, 357:2,  
357:7, 357:15, 358:23, 359:9, 360:7,  
360:25, 361:11, 362:3, 362:16,  
365:14, 367:17, 368:15, 376:23,  
379:21, 380:13, 380:21, 383:1,  
395:25, 400:13, 412:15, 423:18,  
424:21, 424:23, 425:4, 425:11,  
426:13, 426:15, 427:22, 431:2,  
432:14, 432:22, 434:5, 450:19,  
452:16, 457:14, 463:9, 463:20,  
471:19, 472:2, 473:14, 475:3, 479:12,  
484:11, 490:17, 493:5, 494:10, 497:8,  
499:11, 503:1, 522:9, 522:18, 527:14  
**upheld** [1] - 509:22  
**Upper** [2] - 431:20, 431:23  
**upside** [1] - 445:7  
**USA** [9] - 444:17, 444:22, 446:17,  
462:22, 463:23, 463:25, 464:4,  
481:17, 481:23  
**USB** [1] - 532:5  
**USD** [1] - 432:16  
**user** [1] - 436:1  
**uses** [5] - 439:12, 497:15, 498:1,  
500:6, 504:21

**V-L-A-H-A-K-I-S** [1] - 465:12  
**Vaguely** [1] - 410:20  
**valuable** [2] - 470:11, 470:16  
**value** [9] - 382:9, 495:3, 498:2, 498:11,  
498:16, 499:6, 499:9, 499:16  
**Vanderventer** [1] - 346:19  
**variant** [1] - 498:11  
**varied** [1] - 380:5  
**variety** [1] - 524:8  
**various** [9] - 390:2, 443:7, 448:5,  
449:24, 450:6, 453:24, 454:7, 468:15,  
490:10  
**vehicle** [5] - 353:11, 355:25, 356:2,  
363:11, 367:16  
**verdict** [1] - 456:22  
**verified** [1] - 380:11  
**version** [3] - 412:20, 522:19, 528:22  
**versus** [1] - 509:18  
**vet** [1] - 460:10  
**vetted** [1] - 459:13  
**via** [4] - 466:22, 476:20, 486:15, 489:5  
**video** [1] - 438:17  
**view** [3] - 348:12, 387:1, 387:4  
**viewed** [2] - 428:9, 484:24  
**viewing** [1] - 386:19  
**violations** [3] - 416:6, 458:21, 458:22  
**visible** [1] - 476:11  
**VLAHAKIS** [2] - 466:1, 533:16  
**Vlahakis** [4] - 464:19, 464:21, 465:11,  
485:23  
**void** [1] - 490:21  
**VOL** [1] - 436:10  
**volume** [1] - 353:13  
**volumes** [1] - 475:11

## W

**wait** [7] - 379:11, 442:4, 471:25,  
489:18, 516:7, 516:8, 522:5  
**waiting** [5] - 358:9, 400:7, 400:20,  
478:13, 491:2  
**walk** [1] - 439:14  
**walked** [1] - 379:21  
**wall** [1] - 481:2  
**wallet** [3] - 358:7, 358:19, 397:23  
**wands** [1] - 361:9  
**wants** [1] - 356:5  
**warrant** [6] - 427:5, 428:10, 441:12,  
447:19, 447:21, 449:8  
**wash** [7] - 441:5, 443:14, 452:8, 452:9,  
452:13, 453:8, 453:19  
**washed** [2] - 450:11, 472:5  
**washing** [4] - 441:2, 441:6, 443:18,  
443:19  
**Washington** [2] - 346:20, 440:13  
**wasting** [1] - 442:11  
**watered** [2] - 518:13, 518:15  
**ways** [2] - 489:10, 524:9  
**weapon** [1] - 437:21  
**wearing** [2] - 422:6, 422:8  
**weather** [1] - 457:7  
**web** [6] - 417:6, 419:1, 420:4, 420:6,  
421:4, 421:7  
**website** [7] - 377:5, 377:21, 378:1,  
422:16, 422:17, 472:15, 476:10  
**week** [4] - 359:19, 359:20, 360:7,  
360:20  
**weighted** [1] - 425:6  
**weird** [1] - 515:9  
**welcome** [2] - 407:24, 416:19  
**Wendy** [1] - 362:12  
**Wendy's** [2] - 351:6, 351:21  
**WhatsApp** [1] - 427:1  
**whispered** [1] - 456:13  
**whole** [7] - 437:11, 457:18, 465:2,  
498:7, 513:5, 522:5, 528:12  
**wholesale** [1] - 528:6  
**William** [2] - 430:4, 436:1  
**willing** [4] - 347:20, 366:14, 492:16,  
501:8  
**wiretap** [1] - 423:10  
**withdraw** [2] - 396:18, 396:20  
**withdrawing** [1] - 396:19  
**withdrawn** [3] - 386:12, 436:12,  
447:24  
**WITNESS** [17] - 415:13, 415:17,  
416:17, 416:19, 457:20, 457:23,  
458:25, 459:2, 462:4, 464:24, 465:4,  
465:7, 465:11, 466:25, 467:2, 482:11,  
533:3  
**witness** [41] - 349:24, 350:5, 350:11,  
351:10, 351:12, 368:16, 368:17,  
370:5, 407:25, 410:6, 415:1, 415:2,  
415:8, 415:11, 415:19, 422:9, 446:10,  
447:2, 454:5, 455:9, 456:2, 456:6,  
456:16, 456:19, 457:9, 457:14, 458:2,  
461:25, 462:15, 464:11, 464:17,  
464:22, 466:2, 470:18, 470:20,  
470:21, 478:8, 482:7, 482:12, 496:9  
**wittingly** [1] - 468:5  
**wonder** [1] - 508:10  
**wonderful** [2] - 467:3, 494:4  
**wondering** [2] - 429:13, 438:22  
**word** [9] - 452:13, 497:5, 498:5, 500:6,  
514:13, 514:16, 515:9, 517:11, 520:19  
**worded** [2] - 509:21, 512:4  
**words** [7] - 402:24, 497:9, 498:1,  
506:20, 509:7, 514:5, 515:13  
**works** [1] - 358:3  
**worried** [2] - 348:17, 501:5  
**Worry** [1] - 501:7  
**worry** [2] - 501:7, 501:8  
**worth** [2] - 429:12, 432:16  
**write** [7] - 362:11, 362:13, 411:12,  
416:22, 421:21, 484:6, 495:2  
**writing** [1] - 521:10  
**written** [3] - 506:20, 523:1, 530:4

## ALL WORD INDEX

28

**wrote** <sup>[1]</sup> - 362:14  
**www.FinCEN.gov** <sup>[1]</sup> - 476:11

**X**

**XVIII** <sup>[1]</sup> - 497:21  
**XXI** <sup>[1]</sup> - 497:18  
**XXXI** <sup>[1]</sup> - 497:12

**Y**

**year** <sup>[3]</sup> - 392:11, 392:19, 393:8  
**yearly** <sup>[1]</sup> - 460:12  
**years** <sup>[3]</sup> - 374:2, 416:12, 476:20  
**yelling** <sup>[1]</sup> - 367:14  
**yesterday** <sup>[2]</sup> - 384:13, 494:13  
**YORK** <sup>[1]</sup> - 346:1  
**York** <sup>[33]</sup> - 346:6, 346:15, 346:16,  
346:20, 346:21, 368:21, 374:7,  
374:15, 374:16, 411:10, 417:17,  
430:8, 434:20, 436:18, 444:23,  
446:17, 457:12, 458:8, 458:13, 459:9,  
459:12, 459:19, 460:1, 460:4, 460:17,  
461:4, 461:8, 462:14, 462:21, 462:23,  
464:5, 486:4  
**yourself** <sup>[2]</sup> - 411:1, 517:23  
**Yup** <sup>[1]</sup> - 501:14  
**yup** <sup>[2]</sup> - 360:15, 494:18

**Z**

**zoomed** <sup>[1]</sup> - 531:21